

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

GENERAL SERVICES ADMINISTRATION

And

NATIONAL FEDERATION OF FEDERAL  
EMPLOYEES

Case No. 20 FSIP 079

**DECISION AND ORDER**

**BACKGROUND**

This case was filed by the General Service Administration (GSA or Agency), and concerns the negotiations of nine (9) articles in the Collective Bargaining Agreement (CBA) between the Agency and the National Federation of Federal Employees (NFFE or Union). The General Service Administration's primary function is to serve as the "landlord for the Federal Government" by leasing and managing real estate for Federal agencies; it also provides agencies with information technology services and supplies. Other aspects of the GSA mission include the promulgation of the Federal Travel Regulations and the Federal Acquisition Regulations. The National Federation of Federal Employees represents approximately 3,300 professional and non-professional employees, GS-5 through -14. The bargaining-unit includes employees stationed in the Washington area in the Central Office and the National Capital Region, as well as most employees in Regions 5 (Chicago) and 4 (Atlanta), and a small number of employees in Regions 3, 7 and 9.

In December 1991, GSA and NFFE executed a term CBA, which went into effect the end of January 1992. That CBA was for a duration of three (3) years, after which it rolled over for annual renewal, unless re-opened by either Party during the window for re-opening. Portions of the CBA were re-opened subsequently and the entire CBA was re-opened in 2011, when the Union exercised its right to reopen the CBA during the open annual window in 2011. That successor CBA became effective March 2017, after an agreement was finally reached through a Panel-imposed Mediation-Arbitration procedure, with Member Don Wasserman.

On May 25, 2018, the President issued three (3) Labor Relations Executive Orders<sup>1</sup>. While the parties were negotiating the CBA, and seemed to be close to reaching agreement on the articles, except one, Article 23 – Work Schedule, the Agency contacted the Union to discuss re-visiting nine (9) articles of the CBA which the Agency believed were in conflict with the Executive Orders. Because all of these 9 articles were in conflict with the Executive Orders, the Agency believed that those articles would have resulted in Agency Head disapproval of them as non-negotiable after Section 7114(c) review.

The Parties mutually agreed to re-open the 9 articles in conflict with the Executive Orders. However, the Parties made little negotiations progress on those re-opened articles, and were not able to reach resolution with the assistance of FMCS. FMCS released the parties in May 2020. The Agency submitted their request for assistance on August 24, 2020. On November 10, 2020, the Panel asserted jurisdiction over the nine (9) articles. The Panel ordered the parties to a Written Submissions procedure. Both parties timely provided their submissions<sup>2</sup>.

### **COLLATERAL MATTER**

In its written submission, the Union requested that the Panel return the case to the parties for a ninety (90) day period of bargaining. The Union explains that the parties were close to reaching agreement on the articles in the CBA when the Agency changed their proposals, asserting that the changes were necessary because they needed to be in compliance with the Trump Administration’s Executive Orders in order to clear Agency Head Review. The Union argues that the results of the recent Presidential Election may affect the application of the Executive Orders. The Union believes that it is likely that the relevant Executive Orders will be rescinded after the transition to the new administration. The Union asserts that if the Executive Orders are rescinded, the parties will likely return to the agreement reached prior to the Agency changing their proposals to align with the Executive Orders.

The Agency has argued that the Executive Orders are considered a “government-wide rule or regulation” that permissibly remove subjects from the scope of collective bargaining, as contemplated by Congress. 5 U.S.C. § 7117(a)(1). It is notable that the Agency has not declared the Union’s proposals non-negotiable in support of their belief that the proposals are in conflict with the Executive Orders. Nevertheless, the Agency relies on that position to oppose the Union’s proposals and in support of their proposals.

Whether the Executive Orders will be repealed is uncertain. What is clear, however, is that the Panel has asserted jurisdiction over this CBA impasse and is prepared to fulfill its statutory function<sup>3</sup> by bringing closure to this negotiation. The Panel denies the Union’s request to return the parties to the bargaining table for 90 days so the matter can await the results of the

<sup>1</sup> Executive Order 13836 (Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining), Executive Order 13837 (Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use), and Executive Order 13839 (Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles).

<sup>2</sup> The Union chose not to submit a rebuttal statement.

<sup>3</sup> 5 U.S.C. Section 7119 (c)(1) - The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

Presidential Transition. The Panel is prepared to fulfill its function by bringing closure to this negotiations impasse.

### **9 ISSUES AT IMPASSE**

1. Article 2 – Management Rights
2. Article 5 – Unions Use of Facilities.
3. Article 6 – Official Time
4. Article 7 – Grievance Procedure
5. Article 8 – Arbitration
6. Article 15 – Performance Appraisal
7. Article 30 – Discipline
8. Article 31 – Employee Space
9. Article 38 – Duration and Termination

### **POSITIONS OF THE PARTIES AND PANEL DETERMINATION**

1. Article 2 – Management Rights

The Agency proposals seek to eliminate a commitment to negotiating permissive subjects under 5 USC 7106 (b), consistent with the Executive Orders. The Agency's provision is intended to comply with section 6 of Executive Order 13836 which prohibits bargaining of permissive subjects (i.e., 5 USC 7106 (b)). The Agency argues that Section 6 of EO 13836 restates agencies' statutorily-conferred right under Section 7106 of the Statute to "refrain from negotiating." The Agency argues that this proposal is preferable because it eliminates the costs and time required to bargain permissive subjects. No quantitative data was offered by the Agency to support the projected cost or time savings.

The Union seeks language that makes negotiations of permissive matters available, but at the option of the Agency. For each of the remaining articles, the Union argues that their proposal should be adopted because the parties have already tentatively agreed to the language of the articles. The Agency rebuts that argument, noting that the parties mutually agreed to re-open the tentatively agreed upon articles, thereby, rendering those tentative agreements nullified. Also, the Union argues that the language is consistent with the statute (5 USC 7106 (b)) and does not prohibit the Agency from complying with the Executive Order on permissive bargaining because the agency is free to elect permissive bargaining or not.

The Panel orders the parties to adopt the Union's proposal, which reflects the Statute by allowing the parties to bargain permissive subjects under 5 USC 7106 (b), at the election of the Agency. The Agency offered no support to its preference other than its desire to reflect the Executive Order. The Union's proposal, consistent with the law, leaves the choice of bargaining permissive subjects at the option of the Agency.

## 2. Article 5 – Unions Use of Facilities.

The Agency's proposals seek to eliminate the Union's free use of facilities consistent with the Executive Orders. The Agency's provision is intended to comply with section 4 of Executive Order 13837. Section 4(a)(iii) of EO 13837 prohibits employees from receiving "free or discounted" use of Government property or resources for union business unless the use is "generally available" for other employees acting on behalf of "non-Federal organizations." The Agency's proposal also limits access to Agency equipment and services. Finally, the Agency's proposal eliminates the need to bargain over potential travel expenses for Union representatives. Section 4(a)(iv) of EO 13837 provides that "[e]mployees may not be permitted reimbursement for expenses incurred performing non-agency business, unless required by law or regulation." The Agency argues that their proposal represents an annual cost-savings of over \$209,299.00 (spread sheet provided by the Agency), representing annual current market value for space designated as Union office space, value of equipment provided free, and current proportion of shared services for security costs for Union office space.

The Union seeks to maintain the status quo of using Agency facilities at no cost. The Union simply argued that the previously agreed upon language is preferable because the Agency offered no practical problem with the agreed upon language.

The Panel orders the parties to adopt the Agency's proposal. The Agency demonstrated that the proposed change will result in an annual cost savings of over \$200,000. The Union did not refute this argument, nor did they demonstrate how the change would interfere with its ability to fulfill its statutory obligation to represent the bargaining unit.

## 3. Article 6 – Official Time

The Agency seeks Official time provisions consistent with the Executive Order 13837 (e.g., .5 hours of official time per bargaining unit employee and 25% individual cap). The Agency provided no discussion or justification for their proposed amount of official time. The Agency did offer that in March 2019, a new process was implemented in the agency's time and attendance system (i.e., HR Links) to manage official time. By implementing a new time and attendance process, which assisted the supervisors in more effectively managing and tracking official time, the Agency asserts that they saw a reduction in the hours of official time used, creating an overall savings for the Agency:

- Savings in Hours between FY18 and FY20 - 30,139.50 hours
- Savings in Hours between FY18 and FY19 – 7298 hours
- Savings in Dollars between FY18 and FY20 - \$1,903,994

- Savings in Dollars between FY18 and FY19 – \$476,846

In addition to being consistent with the Executive Order requirement, the Agency also offers that their official time proposal is more consistent with a recent FLRA case, *Customs and Border Protection and AFGE*, 71 FLRA 119. (attached). In that case, the Union president (grievant) requested sixty-four hours of official time for certain activities, but did not specify how much time he needed for each activity. The Agency asked the grievant to provide that information, he refused, and the Agency denied the request as excessive. The Arbitrator found that the parties' CBA did not require the grievant to provide the additional information about his official-time request. Thus, the Arbitrator concluded that the Agency violated the agreement. On exceptions, the Authority found that even when parties have agreed to procedures for requesting official time, those procedures must allow an agency to gather information necessary to make a reasoned determination as to whether the request is reasonable under 5 U.S.C. § 7131(d). Because the award prevented the Agency from determining how many hours of official time the grievant would use for each activity, the Agency could not determine whether the request was reasonable. Thus, the Authority set aside the award as contrary to § 7131(d).

The Union seeks to maintain status quo, which includes the allotment of full-time representatives (i.e., up to 100% representatives). The Union simply argued that the previously agreed upon language is preferable because the Agency offered no practical problem with the agreed upon language.

When reviewing official time disputes, the Panel expects the parties to provide sufficient argument and evidence to support their positions. The Agency presented their argument showing that there has been a savings on official time over the last two fiscal years. The Agency's proposed official time calculation of .5 per bargaining unit employee is slightly higher than the actual official time usage in FY20:

- Actual use in FY20 - 1094 hours
- .5 of the bargaining unit (3300) - 650 hours.

The Union did not refute the savings achieved, nor did the Union offer any argument that the need for official time is expected to change going forward. The Panel orders the parties to adopt the Agency's official time proposal, which provides for 1/2 hour of official time per bargaining unit employee and a 25% individual cap.

#### 4. Article 7 – Grievance Procedure

First, the Agency proposed a change on how a grievance will be served on the Agency. The Agency has proposed that all grievances be filed in a Universal mail box. The Agency explains that as a result of a recent re-organization along customer service lines, OHRM is no longer organized along regional lines; instead, it is organized along customer lines (PBS, FAS, or Staff Office lines). National LR is responsible for implementing the CBA and for providing assistance to LER Specialists in the field. However, National LR has no supervisory relationship over their compliance with the terms of the national Agreement. Therefore, the Agency has proposed to require all grievances to be filed at a universal mailbox (to be established if this

provision goes into effect), to increase visibility of all filings, ensure proper handling, consistent with the provisions in the new Agreement, and to facilitate proper assignment of the grievances to the appropriate Specialist.

The Agency also seeks additional exclusions to the grievance procedure, consistent with the Executive Order. The Agency would add to the list of exclusions: performance ratings, awards, and removals/other adverse actions. The Agency generally states that the elimination of grievances over these matters would improve consistency, save time and the cost of arbitration, and leave the judgement over the adverse actions to the trained judges of MSPB. The Union disagrees with these changes. The Union seeks the prior agreed upon language. The Union argued that the previously agreed upon language is preferable because the Agency offered no practical problem with the agreed upon language. Additionally, the Union also argues that there have been no excessive arbitrations of removals in this unit (i.e., only one arbitrated removal case in the past four (4) years.)

The Panel orders the parties to adopt the Union's proposal. The Agency failed to establish the need to exclude additional matters from the negotiated grievance procedure. As for the desire that the grievant, or the Union on their behalf, file the grievance both with their supervisor and in a national electronic mailbox, in order to keep the national office informed, that issue should not be the grievant's responsibility. That is an internal management matter.

#### 5. Article 8 – Arbitration

The Agency seeks to exclude the same matters from the arbitration procedure. The Agency also proposes the concept of "loser pays" as a means for discouraging baseless actions. The Union does not agree. Same arguments raised as above (Article 7). The Panel orders the parties to adopt the Union's proposal.

#### 6. Article 15 – Performance Appraisal

The Agency seeks changes consistent with the Executive Orders, but presents no argument on the revised proposals. The Union seeks the maintenance of the status quo. The Union simply argued that the previously agreed upon language is preferable because the Agency offered no practical problem with the agreed upon language. Because the Agency offered no practical reason or arguments for change, the Panel orders the parties to adopt the Union's proposal; previously agreed upon language.

#### 7. Article 30 – Discipline

The Agency seeks changes consistent with the Executive Order (e.g., no commitment to use progressive discipline, reduction of time on a PIP, and limiting appeals to adverse actions to MSPB – not grievable). The Agency offers no argument or support for its proposed changes. The Union disagrees with the proposed changes. The Union argued that the previously agreed upon language is preferable because the Agency offered no practical problem with the agreed upon language. Also, the Union asserts that there was only one arbitration over a removal in the

past 4 years. Because the Agency offered no practical reason or arguments for change, the Panel orders the parties to adopt the Union's proposal; previously agreed upon language.

#### 8. Article 31 – Employee Space

The Agency seeks to limit when employees and the Union will be pre-decisional involved regarding office moves or re-configurations. The Agency states that its proposal promotes efficiency in the administration of the government. The Union seeks involvement before all decisions are finalized. The Union simply argued that the previously agreed upon language is preferable because the Agency offered no practical problem with the agreed upon language. The Panel orders the parties to adopt the Agency's proposal. While the Agency had been willing to engage the Union pre-decisionally on space issues, the Agency's language preserves the Agency's right to determine if it is in the best interests of the Agency to engage pre-decisionally on a case-by-case basis going forward under the new CBA.

#### 9. Article 38 – Duration and Termination

The Agency seeks to no longer provide printed copies of the CBA to the Bargaining Union (i.e., electronic only). The Agency argues that their proposal eliminates the unnecessary cost of printing of mass contracts and promotes efficient distribution of the contract. It follows principles of the President's Management Agenda to eliminate hard copies, whenever possible. The Union seeks to maintain the practice of issuing printed CBAs. The Union simply argued that the previously agreed upon language is preferable because the Agency offered no practical problem with the agreed upon language.

Additionally, the Union has proposed that in the event the Executive Orders are rescinded, the rights contained in the prior CBA will be restored. This proposal is similar to the request by the Union to return the parties to the bargaining table while they await to see what happens with the transition.

The Panel orders the parties to adopt the Agency's proposal. The Panel has determined in other cases (e.g., FSIP 20022 – VA) that the cost of printing thousands of CBAs is an inefficient use of the Agency's resources. It is likely that most employees have electronic access or at least access to the Union, who can provide a written document as they see fit. The Panel rejects the Union's language seeking to automatically restore the language of the prior CBA in the event of rescission of the Executive Orders. The parties are free to mutually agree to reopen the CBA as they see fit.

**ORDER**

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provision as discussed above.



Mark A. Carter  
FSIP Chairman

January 17, 2021  
Washington, D.C.

Attachment: Parties' Proposals

**ARTICLE 2 – MANAGEMENT RIGHTS**

- A.** Subject to subsection (b) of this section, nothing in this Agreement shall affect the authority of any Management official.
- a. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
  - b. In accordance with applicable laws -
    - i. to hire, assign, direct, layoff and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
    - ii. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
    - iii. with respect to filling positions, to make selections for appointments from
      - 1. among properly ranked and certified candidates for promotion; or
      - 2. any other appropriate source; and to take whatever action may be necessary to carry out the Agency mission during emergencies.
- B.** Nothing in this Agreement shall preclude the Agency and the Union from negotiating-
- a.
  - b. procedures which Management officials of the Agency will observe in exercising any authority under law or this Agreement; or
  - c. appropriate arrangements for employees adversely affected by the exercise of any authority under law or this Agreement by such Management officials.

## ARTICLE 5 - UNION USE OF OFFICIAL FACILITIES AND SERVICES

### ~~Section 1. Office Space and Facilities Office Space/Equipment/Services~~

- ~~A. The Agency shall continue to provide office space where it has been doing so prior to the effective date of this Agreement. This includes all existing Union offices (Atlanta RBR Building, NCR Regional Office Building, and Chicago JCK Building). In the event an existing Union office must be moved the parties agree to negotiate to the fullest extent allowed by law.~~
- ~~B. Union Representatives, who do not presently have a Union office, may request Agency office space on an ad-hoc basis, which provides privacy for discussion with employees for representational purposes.~~
- ~~C. The Agency will provide the Union offices with office furniture and equipment comparable to what the employees receive. Office furniture shall include a desk, a file cabinet, chairs (ergonomic if available), printer, fax, scanner, or multi-function device which serves a number of these functions, a reasonable amount of copy paper, toner, service and support to this equipment at no cost to the Union. The Agency agrees to provide the Union with a reasonable amount of office supplies equivalent to what Agency employees receive (e.g., pens, pencils, note-pads).~~
- ~~D. Employees are entitled to use their Agency-issued laptop or computer equivalent for Union representational activities. The Agency will also permit Union representatives the use of Agency equipment, in common areas, for representational duties.~~
- A. No employee, when acting on behalf of a Federal labor organization, may be permitted the free or discounted use of government property or any other agency resources when acting on behalf of non-Federal organizations. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems.
- B. Any use of Agency equipment or services shall be consistent with the Agency's personal use policies.
- C. Union representatives who use Agency computers for representational purposes are subject to Agency regulations concerning use of government computers.
- E. Any use of Agency equipment or services shall be consistent with the Agency's personal use policies.
- F. Union representatives who use Agency computers for representational purposes are subject to Agency regulations concerning use of government computers.

### ~~Section 2. Internal Mail Services~~

#### ~~A. Non-Electronic Mail~~

- ~~a. The internal mail distribution service of the Agency shall be available for reasonable use by the Union in connection with its representational duties and for tangible Union benefit information.~~

#### ~~B. Electronic Mail~~

- ~~a. Consistent with The Union is also authorized to use the Agency's electronic mail system for official representational duties in communication with Management and bargaining unit employees, subject to law, Agency and government-wide policies, guidance and practices. Use of broadly-distributed~~

## 20079 Agency Proposal ARTICLE 5 - UNION USE OF OFFICIAL FACILITIES AND SERVICES

~~messages will be reasonable, which means that it is understood that the Agency's ability to carry on its business will not be interfered with by the Union's frequency of use of broadly distributed messages and may only be addressed to bargaining unit employees.~~

- ~~G. Agency officials or IT personnel are not entitled to access Union representatives' electronic mail, mail, computer, and or files other than for legitimate purposes as established by law, government wide or Agency regulations and policy.~~

### **Section 3. List of Employees**

~~On a quarterly basis, GSA will provide electronically to the NFFE National Secretary Treasurer or designee an up-to-date list of bargaining unit employees. The list will show full name, position title, grade, organizational assignment, physical location (city and state if virtual employee), date of entry on duty, and current contact information (i.e., business telephone number, agency email address but not Social Security Number, home address, or telephone number). The Parties are both responsible for fully maintaining confidentiality, security practices, and protecting Personally Identifiable Information (PII) that has been provided.~~

### **Section 4. Union Representatives' Parking**

~~Union representatives' access to parking will follow current practice consistent with government-wide and GSA parking policy and guidance. Should the GSA parking policy and guidance or government-wide policy change, the Agency will give the Union notice and the opportunity to bargain to the fullest extent allowed by law.~~

### **Section 5. Bulletin Boards**

~~The Agency will maintain NFFE bulletin boards currently in place as of the execution of this Agreement. In addition, the Union shall be allowed to post its literature on the same basis as any employee or the Agency on all general use bulletin boards where bargaining unit employees are located.~~

### **Section 6. Telephones**

- ~~A. The Agency will continue to provide existing Agency telephones and service and will provide at least one phone in each Union office with conferencing capability together with maintenance and service. Should the Agency eliminate land-lines or the current method of providing service, the Agency will provide the Union notice and an opportunity to bargain over the implementation of the elimination of land-lines and the type of new service to be provided.~~
- ~~B. When telephone system capabilities are upgraded, the Union office will be included in the system upgrade at no cost to the Union.~~
- ~~C. Employee Union representatives who are on 100% official time will each be provided with a cell phone/PDA and services at no cost to the Union.~~
- ~~D. Union representatives who are on less than 100% official time, who continue to perform official duties and have been issued a cell phone/PDA/multi-purpose mobile phone for use in the performance of their official duties, may use those devices in connection with the performance of their representational duties.~~

## 20079 Agency Proposal ARTICLE 5 - UNION USE OF OFFICIAL FACILITIES AND SERVICES

- ~~E. The NFFE National Council President or equivalent, if not an Agency employee, will be provided an Agency-issued cell phone/PDA and services at no cost to the Union.~~
- ~~F. Union representatives will have the same communications privacy as is applied to other employees.~~

### **Section 2. Distribution of Literature**

Subject to security, safety and legal requirements, the Union may distribute informational literature on all GSA premises before and after work, during breaks and lunch periods.

### **Intent Statements for Article 5**

- ~~A. At this time the Agency has no definite plans (other than those offices described in the MOU dated June 13, 2012) to move any of the Union offices contained in this Article. At the time the Agency decides to move any Union offices, the Agency will give notice to the Union and bargain pursuant to this Agreement. (Section 1(A))~~
- ~~B. It is understood that the MOU between GSA and NFFE dated June 13, 2012 on office consolidation into 1800 F Street will provide new office arrangements for NFFE representatives. Until the Union representatives are actually moved pursuant to the MOU, they will remain in their existing space. The MOU is incorporated into this Agreement as Appendix XX.~~
- ~~C. It is understood that in Tampa, Florida the Union representative will be able to use his/her assigned work space for both GSA and Union representation work.~~
- ~~D. Furniture and equipment must be serviceable and comparable to the office furniture and equipment of employees. Excess furniture may be a source for Union furniture. (Section 1(C))~~
- ~~E. The Agency will not incur any cost from the internal mail distribution beyond the normal cost of providing the service. Examples of excluded costs are COD charges, Overnight Delivery charges, Postage Due, Customs charges, and like charges. The Agency will provide access so long as the Agency maintains the internal mail services. In the event the Agency terminates its internal mail services, the Agency will notify the Union. The Agency agrees to provide notice as soon as the Agency becomes aware. The distribution would be to bargaining unit employees. (Section 2(A))~~
- ~~F. "Subject to law" includes the Hatch Act. (Section 2(B))~~
- ~~G. It is understood that confidential information will be maintained on these computers. Therefore, absent legitimate purposes, Agency or IT personnel will not access that information. If the Agency elects to do a scan only of Agency computers used by the Union, the Agency will notify the Union representatives prior to the scan. (Section 2(C))~~
- ~~H. The Agency will consider requests for the bargaining unit list of employees other than quarterly. Bargaining unit employee lists will also be provided when necessary in support of a representation petition filed with the FLRA. (Section 2 3)~~
- ~~I. Where the Union organizes new bargaining units at new locations where the Union has never had bargaining unit employees before, the Agency agrees to provide bulletin boards consistent with this Agreement. (Section 5)~~
- ~~J. Union representatives shall not be required by the Agency to keep records of incoming or outgoing calls. (Section 6)~~

## 20079 Agency Proposal ARTICLE 5 - UNION USE OF OFFICIAL FACILITIES AND SERVICES

- ~~K. It is understood that “existing Agency telephones” for the purposes of the move to 1800 F Street will include a telephone and telephone capability at each workstation. (Section 6(A))~~
- ~~L. Employee Union representatives who are on 100% official time may be provided a multi-purpose mobile phone (i.e., Blackberry, or equivalent) based on availability in their work site and as provided to other employees. (Section 6(C))~~
- ~~M. Employee Union representatives who have already been issued an Agency phone will not be issued a duplicate phone. (Section 6(C))~~

## ARTICLE 31 – EMPLOYEE SPACE

### Section 1. Space Redesigns, Renovations, and Employee Relocations

#### A. Space Change Needs

The Parties agree that the physical movement of individuals or organizational groups of bargaining unit employees may be necessary due to redesign, renovation or relocation of offices, or to promote the efficiency of operations and/or the efficient use of allocated office space.

#### B. Pre-Decisional Involvement

At the election of the Agency, the Parties ~~will~~ may engage in Pre-Decisional involvement (PDI) ~~whenever practicable with regard to office moves or reconfigurations.~~ When the Agency ~~elects is considering~~ PDI for a decision to move, co-locate, open a new office, expand, or reduce any office space, the Labor Relations ~~Specialist Officer (LRO)~~ (LRS) will notify the Union. ~~before the Agency engages in the formal assessment process which is intended to result in a final decision.~~ The Parties agree that the goal is to have a collaborative process and attempt to reach agreement before the Agency's requirements are finalized and submitted.

#### C. Information-Sharing

1. The Union will be afforded an opportunity to designate one or more representative(s) to participate in walk-throughs of space. The representative(s) may ask questions and provide input.
2. As applicable and available, the Union will be furnished the following:
  - a. Copies of floor plans showing current and proposed post-move locations of bargaining unit employees;
  - b. Names, titles, series, grades, and service computation dates for all bargaining unit employees to be moved;
  - c. Any known environmental problems;
  - d. The projected date or series/range of dates of the move; and
  - e. Any work-related groupings or collaborative arrangements proposed to enhance the performance or efficiency of work processes.
3. The Union will have the opportunity to meet with groups of affected employees to obtain feedback on proposed space changes.

#### D. Reaching Resolution

The Parties will meet, as appropriate, to provide the Union an opportunity to provide timely input into the space change. If a resolution is reached on issues involved in the space change, the Parties will sign an agreement stating the provisions agreed upon. Within five (5) days, or as otherwise agreed, after the Parties acknowledge

## Agency Proposal Article 31

that full agreement has not been reached, the LRS or designee will provide formal notice to the Union of its right to request timely bargaining on those issues appropriate for bargaining, in accordance with Article 9.

### **E. Bargaining of Union Proposals**

Bargaining will be in accordance with Article 9 of this Agreement.

#### **Section 2. Space Assignment.**

The Parties will discuss and/or negotiate space assignment through the procedures set forth in Section 1. The Parties recognize that space assignment will depend upon various criteria including teams, organizational components, projects, functional responsibilities, work schedules, location of supervisors, amount of time an employee teleworks and/or security needs and any discussions or agreements should be based on such considerations

#### **Section 3. Non-Smoking/Vaping**

Smoking is prohibited in or near GSA-occupied space and in Government-owned or leased vehicles assigned to GSA. ~~in conformance with the 2010 NFFE-GSA "No-Smoking" MOU and Government-wide policies. Any changes to current, officially-designated outdoor smoking areas will not be implemented without providing notice and an opportunity to bargain to the Union.~~ Similarly, vaping is prohibited in areas and vehicles where smoking is prohibited.

## ARTICLE 8 - ARBITRATION

### Section 1. Basis for Appeal

If the remedy requested is not granted in the final step of the grievance procedure in accordance with Article 7, only the Union or the Agency may invoke arbitration.

### Section 2. Issues Excluded From Arbitration

- A. The assignment of ratings of record;
- B. The award of any form of incentive pay, including time-off awards, cash awards; quality step increases; or recruitment, retention, or relocation payments;
- C. Any dispute concerning decisions to remove any employee from Federal Service for misconduct or unacceptable performance, or any other adverse action.

### ~~Section 2.~~ Section 3. Notification of Invoking Arbitration

- A. Union notification must be submitted pursuant to Section 1, above, within thirty (30) days of receipt of the decision at the final step of the grievance procedure or within thirty (30) days of the end of the Step 2 deciding official response time limit. The preferred method for filing a notification is via electronic mail. Notification by electronic mail must be sent to email box **XXXXXXXXXXXX@gsa.gov** by 11:59pm in the time zone of the sender. The subject line of the message must state "Notice of Arbitration". In-person delivery must be delivered to the NDLR or designee, and must be received by 5:00pm on the 30th day.
- B. The Agency will notify the Regional Vice President (RVP) for Regional grievances, National Council President (NCP) or designee for National level grievances in accordance with the procedures in paragraph A, above.

### Section 4. Statement of Issue

The Parties shall communicate in advance of the arbitration hearing in an attempt to agree on a joint submission of the issue(s) for arbitration. If the Parties fail to agree on a joint submission, each Party will prepare a statement of what it believes the issue(s) to be. The Parties will exchange these statements of the issue(s) at least five (5) days in advance of the scheduled arbitration hearing date. The arbitrator will have final authority to determine the issue(s) to be decided.

### ~~Section 4.~~ Section 5. Selecting the Arbitrator

- A. Within thirty (30) days from the notice of the arbitration invocation, absent mutual agreement of the Parties the invoking party will submit a request for a list of seven (7) potential arbitrators from the Federal Mediation and Conciliation Service (FMCS). The Party which invokes shall pay for the list of arbitrators. Nothing precludes the Parties from mutually agreeing to an arbitrator outside the FMCS process contained in this Article.
- B. In seeking the list, the requesting Party or Parties will seek candidates experienced in Federal Labor-Law and located in the geographic area where the hearing will occur. The Parties agree that a condition of selection of an arbitrator is that the arbitrator will not impose a requirement of interim payment prior to the issuance of an award.

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- C. Within ten (10) days after receipt of such list the Agency and the Union shall communicate to select an arbitrator. If the Parties cannot agree on an arbitrator from the list, the Parties shall alternately strike names from the list; the Union shall exercise the first strike. After each Party has struck three names from the list, the remaining person shall serve as the arbitrator. If either Party refuses to participate in the selection process, the other Party will make a selection of an arbitrator from the list.
- D. This provision does not prohibit the Parties from mutually agreeing on an arbitrator through other mutually agreeable procedures.

### **Section 6. Arbitration Hearing**

- A. Upon selection of the arbitrator in a particular case, the respective representatives for the Parties will communicate together with the arbitrator and each other in order to select a mutually-agreeable date for the arbitration hearing. The Parties will endeavor to schedule the hearing within sixty (60) days after the arbitrator is selected. In no instance will an arbitration be held more than one hundred and eighty (180) days from the date arbitration was invoked. If the arbitrator cannot conduct the hearing within the desired one hundred and eighty (180) days, the Parties will request a new list and select an alternate arbitrator.
- B. The Parties will jointly request the arbitrator to render a decision within thirty (30) days of the date of hearing or receipt of post-hearing briefs, unless agreed otherwise by the Parties.
- C. Arbitration hearings will be held on the Agency's premises, unless the Parties mutually agree on another location.
- D. The Parties agree that generally the grievant and the deciding official in a grievance over a disciplinary or adverse action shall participate in person.
- E. The arbitrator's decision shall be final and binding, unless a timely exception is filed with the Federal Labor Relations Authority (FLRA) or other appeal filed with the appropriate forum.
- F. If either Party wants to submit a post-hearing brief, both Parties will be given the opportunity to submit a post-hearing brief. The arbitrator will determine the date the post-hearing briefs are due.

### **Section 7. Bargaining History**

Bargaining history testimony and/or affidavits in connection with bargaining history may not be used in an arbitration hearing unless one of the Parties has notified the other in writing at least fifteen (15) days prior to the hearing of its intent to use such testimony and/or affidavits.

### **~~Section 7.~~ Section 8. Arbitrability Determinations**

The arbitrator shall have the authority to make all arbitrability determinations if either Party submits such an issue, and will be required to make arbitrability determinations prior to addressing the merits of the original grievance. Either Party may require a separate hearing on the arbitrability issue before a hearing is held on the merits of the original grievance. The Party requesting the separate hearing on arbitrability will be responsible for the arbitrator's entire bill. If a hearing on arbitrability and a hearing on

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the merits are held, separate arbitrators shall hear the arbitrability issue and the merits issue, unless the Parties mutually agree otherwise.

### **Section 9. Authority of the Arbitrator**

- A. The Agency and the Union agree that the jurisdiction and authority of the arbitrator will be confined exclusively to the grievance as stated on the record.
- B. An employee who is found to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the employee's pay, allowances, or differentials is entitled on correction of the personnel action to receive back pay in accordance with the Back Pay Act.
- C. The arbitrator may award reasonable attorney fees in accordance with 5 U.S.C. 7701(g). The arbitrator will have the authority to rule on the reasonableness of the requested award.
- D. The arbitrator shall have no power to add to, subtract from, disregard, alter or modify terms of this Agreement, or applicable laws, rules or regulations.
- E. Any award may not include assessment of expenses against either Party other than as agreed to in this Agreement.

### **~~Section 9.~~ Section 10. Arbitration Fees and Assessments**

- A. The losing Party, as determined by the arbitrator, will pay all of the regular fees and expenses of the arbitrator hearing a case assigned to him/her. In determining who the losing Party is the arbitrator will only find one of the Parties to the arbitration to be the losing Party, except as outlined in the following paragraphs.
- B. Disciplinary Actions ~~and Adverse Actions~~ under 5 USC Chapter 75 (5 CFR 752): Where the arbitrator finds just cause for the action but mitigates the penalty, the arbitrator will apportion the cost of the arbitration as he/she determines between the Parties. Where the only question before the arbitrator is the appropriateness of the penalty for an offense, and the arbitrator mitigates the employee's discipline, the arbitrator will apportion the cost of the arbitration as he/she determines between the Parties taking into consideration such issues as the nature of the offense, the severity of the penalty imposed, and the degree to which the penalty has been mitigated.
- C. For performance-based actions under 5 USC Chapter 43 (5 CFR 432), the arbitrator will apportion the fees and expenses as he/she determines between the Parties.
- D. The arbitrator will have authority to award reasonable attorneys' fees in accordance with applicable laws, rules and regulations and shall specify in the initial award whether a petition for attorneys' fees may be filed and who may file.
- E. If a hearing is rescheduled or cancelled unilaterally, that Party will pay the full costs of rescheduling and/or the cancellation fees for the hearing. If the hearing is rescheduled or cancelled by mutual agreement both Parties will share the cost. For cases settled by mutual agreement and before an award is issued, regular fees and expenses of the arbitrator shall be shared equally or as the Parties have mutually agreed to in the settlement.

### **Arbitration Fees and Assessments**

- A. The losing Party, as determined by the arbitrator, will pay all of the regular fees and expenses of the arbitrator hearing a case assigned to him/her. In determining who

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the losing Party is the arbitrator will only find one of the Parties to the arbitration to be the losing Party, except as outlined in the following paragraphs.

- B. Disciplinary Actions under 5 USC Chapter 75 (5 CFR 752): Where the arbitrator finds just cause for the action but mitigates the penalty, the arbitrator will apportion the cost of the arbitration as he/she determines between the Parties. Where the only question before the arbitrator is the appropriateness of the penalty for an offense, and the arbitrator mitigates the employee's discipline, the arbitrator will apportion the cost of the arbitration as he/she determines between the Parties taking into consideration such issues as the nature of the offense, the severity of the penalty imposed, and the degree to which the penalty has been mitigated.
- C. For performance-based actions under 5 USC Chapter 43 (5 CFR 432), the arbitrator will apportion the fees and expenses as he/she determines between the Parties.
- D. The arbitrator will have authority to award reasonable attorneys' fees in accordance with applicable laws, rules and regulations and shall specify in the initial award whether a petition for attorneys' fees may be filed and who may file.
- E. If a hearing is rescheduled or cancelled unilaterally, that Party will pay the full costs of rescheduling and/or the cancellation fees for the hearing. If the hearing is rescheduled or cancelled by mutual agreement both Parties will share the cost. For cases settled by mutual agreement and before an award is issued, regular fees and expenses of the arbitrator shall be shared equally or as the Parties have mutually agreed to in the settlement.

### **Section 11. Transcripts**

- A. The need for verbatim transcripts shall be determined by the Parties on a case-by-case basis. If the Parties agree that a transcript is necessary, the arbitrator and each Party will be provided a copy. The costs of mutually agreed to transcripts will be borne equally by the Parties.
- B. If one Party elects to obtain verbatim transcripts without the agreement of the other Party, the Party requesting the transcript will bear the cost of the transcript and must provide a copy to the arbitrator. If at a later date the other Party should desire a copy of the transcript they agree to split the fees, including court reporter and duplication costs.
- C. When either Party elects a verbatim transcript, it will be made by an authorized court reporter.
- D. The Parties agree that if a transcript by a court reporter is made of any hearing, that transcript is the official record. Either Party may record the hearing, but it will not be considered the official transcript.

### **Section 12. Pre-hearing Exchange of Documents**

The Parties will exchange lists of documents at least fifteen (15) days in advance of the hearing. This does not preclude the arbitrator from admitting other documents.

### **Section 13. Witnesses**

- A. The Parties will exchange lists of witnesses including a brief synopsis of proposed testimony at least fifteen (15) days in advance of the hearing. At that time the Parties

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will provide a copy of the witness list to the arbitrator. Either Party has the right to challenge these witnesses or the scope of witness testimony by raising the issues to the arbitrator within five (5) days of the exchange of the witness list. This does not preclude either Party from raising further challenges to witnesses at the hearing.

- B. The arbitrator will have final approval of witnesses. The Agency agrees to allow for a reasonable amount of duty time for grievant(s) and approved witnesses to prepare for and to participate in the arbitration hearing.
- C. The Parties can neither require nor veto the other Party's decision to use telephone or video conference for its witnesses. If the Union chooses to have its witnesses present via video or telephone conference, the Agency will take care of the technical logistics involved in providing that testimony.
- D. In situations where bargaining unit employees are being interviewed by an Agency representative in preparation for a proceeding, which does not include misconduct, before a third party, like arbitration, where the Union is either a party to the proceeding or acting as a representative, the Agency representative must comply with the following safeguards to mitigate the potentially coercive effects of the situation in order to protect employees' rights under the Statute. (Brookhaven Rights)
  - 1. Inform the employee of the purpose of the questioning, that his/her participation is voluntary, and that no reprisal will occur if he/she refuses;
  - 2. Ensure that the questioning occurs in a non-coercive (non-threatening) context, and;
  - 3. Limit the questions to the scope of the legitimate purpose of the inquiry, i.e., to the existence of relevant facts, as opposed to the Union's strategy or what questions the Union asked.

### **Section 14. Miscellaneous**

- A. The arbitrator may retain jurisdiction as appropriate to implement his/her award in the case presented at arbitration.
- B. The arbitrator must abide by the applicable legal standards for the Federal sector.

### **Statements of Intent for Article 8**

- ~~A. By mutual agreement the Parties may adjust the time frames for any provision of this Article.~~
- ~~B. The Parties mutually agree that when there is a separate hearing held on arbitrability they will work together to expedite the selection of a second arbitrator for the hearing on the merits. (Section 7)~~
- ~~C. It is the intent of this section that the arbitrator retains jurisdiction for all attorneys' fees petitions. (Section 9(D))~~
- ~~D. The Parties agree that if a transcript by a court reporter is made of any hearing, that transcript is the official record. Either Party may record the hearing, but it will not be considered the official transcript. This language was incorporated in Section 10(D).~~
- ~~E. The Agency agrees to work with the Union to resolve problems concerning release of employee witnesses. (Section 12)~~
- ~~F. This does not preclude other witnesses from participating in the arbitration hearing in-person. (Section 5(D) and Section 12)~~

## ARTICLE 38 – DURATION AND TERMINATION

### Section 1. Duration and Renegotiation of Agreement

- A. This Agreement shall take effect upon completion of official Agency Head Review or upon the 31<sup>st</sup> day, whichever is earlier, (pursuant to Section 7114(c) of the Statute) after final execution and shall remain in full force and effect for a period of 3 years after its effective date. It shall be automatically renewed for annual periods thereafter unless either Party gives the other notice of its intention to renegotiate this Agreement no more than 105 nor less than 60 days prior to the termination date. Notice and all other arrangements will be made between the National Director of Labor Relations or designee for the Agency and the NFFE National President or designee.
- B. In the event that notice is given for the renegotiation of the Agreement, the Party which first provides notice to renegotiate the agreement will provide written opening ground rule proposals no later than twenty-one (21) days after providing notice. The other Party will submit written counter-proposals for ground rules within fifteen (15) days of receipt. Failure to meet the timeframes by the moving Party will automatically void the renegotiation notice unless an extension has been mutually agreed upon. Ground rules will be fully-negotiable for term bargaining except as otherwise provided in this Agreement. The Parties will commence negotiating ground rules within 10 days of the receipt of counter-proposals. If the Parties are in different geographic locations or the issue of the location of the negotiation of ground rules is in question, telephonic or video teleconference negotiations will be used unless mutually agreed otherwise. Time frames may be extended upon mutual agreement. Each Party determines how its participants will attend the meeting - either in-person or remotely.

### Section 2. Access to and Copies of the Agreement

The Parties agree to reduce costs and encourage the use of the web-based GSA-NFFE National Agreement available on the GSA internal webpage (intranet). ~~The Agency will print 3500 copies for bargaining unit use, which includes 300 copies to be provided to NFFE. Copies to current bargaining unit employees will be distributed according to arrangements made jointly, at the regional/central office level, with the Agency taking the lead. The Agency will not be responsible to pay for or to print copies beyond the 3500 referenced above during the life of this Agreement. Each Party will be solely responsible for the expenses associated with making any additional copies.~~

## ARTICLE 6 – OFFICIAL TIME

### Section 1. Policy Statement

Each employee's foremost responsibility is the completion of the duties of his/her Agency position of record. However, the parties recognize that in the furtherance of good labor-management relations as provided for in the Civil Service Reform Act of 1978, union representatives may use limited amounts of official time under the conditions described in this Article.

### Section 2. Recognition

The Agency agrees to recognize NFFE National Headquarters Representatives, NFFE GSA Council Representatives, and other designated NFFE Union Representatives. The Agency will allow representatives of NFFE Headquarters reasonable access to its facilities for the purpose of carrying out the functions prescribed by this Agreement and the intent of the Statute. NFFE Headquarters representatives must obtain prior approval from the Agency before entering its work areas and will abide by applicable rules and regulations.

### Section 3. Designation of Representatives

- A. ~~The Parties have agreed that thirteen (13) FTEs (total) is the appropriate amount of official time for those representational duties established under this Agreement as reasonable, necessary, and in the public interest. This does not include official time established or requested under statutory authorization (such as to participate in procedures before the FLRA or EEOC, in which cases official time will be determined by those enforcement agencies).~~ The Union will provide the Agency with a list of all designated union representatives within 30 days of the effective date of this Agreement. The Union will provide an updated list when there is a change to a designated union representative. Each list will include the name, union position, GSA organization, duty location, email address and telephone number(s) of each designated union representative. Union representative lists must be emailed to [XXXXXX](#).
- B. ~~Occasional additional official time may be authorized for Labor-Management meetings or other representational activities initiated at the national, regional, or local levels as determined by Management, except that only the National Labor Relations Director or designee may authorize recurring or regular official time in excess of the 13 FTEs. Only GSA employees otherwise in duty status identified on the list provided by the Union will be authorized to use official time.~~
- C. ~~From the total of 13 FTEs,~~ There will be up to four (4) National officers/representatives. One of the four (4) national representatives will be designated by NFFE as the permanent, primary Point of Contact for the NFFE consolidated bargaining units and the Union will provide at least 14 working days' notice to the Agency of any change or substitution to such primary Point of Contact, except in cases of emergency. Failure to provide such advance notice will excuse the Agency from providing notice to the proper NFFE representative, until such time as the National Director of Labor Relations has had actual notice of the change/substitution for 14 work days. Advance notice of 14 working days will be

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provided for changes or substitutions of any of the other three (3) national representatives.

- ~~D. Each of the four National representatives will receive a block of actual 100% official time.~~
- ~~E. D. Should the number of NFFE Representatives from one service, division, or work unit become an Agency concern for workload or coverage issues, the Parties will meet to discuss the problem. If the Parties cannot resolve the issue, either Party may invite FMCS mediation or engage in another form of ADR as mutually agreed.~~
- ~~F. E. The allocations of the 13 actual FTEs may be changed with at least 90 days' written advance notice to the National Labor Relations Director or designee. Changes or substitutions of regional, area, office representatives to fill the allocations will be effective after 21 work days' notice to the Agency's National Director of Labor Relations or designee.~~
- ~~G. An individual appointed to more than one position identified in this Article will be entitled only to use the amount of official time allotted to the higher position held.~~

### Section 2. Designation of Representatives

- A. The Union will provide the Agency with a list of all designated union representatives within 30 days of the effective date of this Agreement. The Union will provide an updated list when there is a change to a designated union representative. Each list will include the name, union position, GSA organization, duty location, email address and telephone number(s) of each designated union representative. Union representative lists must be emailed to [XXXXXX@gsa.gov](mailto:XXXXXX@gsa.gov).
- B. There will be up to four (4) National officers/representatives. One of the four (4) national representatives will be designated by NFFE as the permanent, primary Point of Contact for the NFFE consolidated bargaining units and the Union will provide at least 14 working days' notice to the Agency of any change or substitution to such primary Point of Contact, except in cases of emergency. Failure to provide such advance notice will excuse the Agency from providing notice to the proper NFFE representative, until such time as the National Director of Labor Relations has had actual notice of the change/substitution for 14 work days. Advance notice of 14 working days will be provided for changes or substitutions of any of the other three (3) national representatives.
- C. Should the number of NFFE Representatives from one service, division, or work unit become an Agency concern for workload or coverage issues, the Parties will meet to discuss the problem. If the Parties cannot resolve the issue, either Party may invite FMCS mediation or engage in another form of ADR as mutually agreed.

### Section 4. Definitions

- A. "Agency business" - Shall mean work performed by Federal employees, including detailees or assignees, on behalf of an agency, but does not include work performed on taxpayer-funded union time
- B. "Paid time" - Shall mean time for which an employee is paid by the Federal Government, including both duty time, in which the employee performs agency business, and taxpayer-funded union time. It does not include time spent on paid or unpaid leave, or an employee's off-duty hours.

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- C. “Taxpayer-funded union time” - Shall mean official time or union time granted to an employee pursuant to section 7131 of title 5, United States Code.

### **Section 5. ~~Substitute Representatives~~ Official Time Exclusions**

~~The use of all official time shall be for legitimate representational duties. The NFFE Point of Contact may assign substitute representatives to use (backfill) the official time percentage of representatives for whom they are acting. The National Council President or designee will comply with the notification requirements listed in this Article, normally two workdays in advance, and also designate the period for this substitution.~~

- A. Union representatives may not use official time without advanced written authorization from their supervisor prior to the representative leaving his/her work assignment/workstation.
- B. Absent advanced approval from Management, official time is not appropriate for use by a union representative for work performed at home, including under an authorized telework agreement.
- C. Generally, work schedules will not be altered so that Union officials are in duty status for the sole purpose of using official time. In unforeseen or exceptional circumstances, at the sole discretion of the Agency, work schedules may be altered.
- D. Union representatives are not authorized to earn premium or differential pay, overtime, credit hours, or compensatory time (to include travel compensatory time) for their performance of union representational duties.
- E. In accordance with 5 USC 7131 (b), the use of official time is prohibited for internal union business to include, but not limited to the solicitation of membership, elections of labor organization officials and collections of dues.
- F. Official time is not permissible for Worker’s Compensation, MSPB Hearings or EEO Complaint Cases.
- G. Individuals designated as Union Representatives whose performance falls below the fully successful level may be denied the use official time until performance has reached the fully successful level.
- H. Union sponsored training is not an appropriate representational activity for which official time may be used. The Agency will not pay for official time or any associated expenses for union sponsored training.
- I. Union representatives may not use official time to prepare or pursue grievances (including arbitration of grievances) on another employee’s behalf.
- J. Union representatives may not use official time to prepare or pursue class actions, institutional or national grievances.
- K. Union representatives may not use official time to prepare or pursue contract interpretation grievances or grievances on behalf of the union.

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- L. Generally, official time is not authorized to travel to Mid-term Bargaining Sessions, Term Bargaining Sessions or any 3<sup>rd</sup> party hearings, such as, but not limited to Mediations, FLRA or EEO hearings.
- M. Lobbying or political activities are not appropriate activities for which official time may be used. The Agency will not pay for union time or any associated expenses for any lobbying or political activities.

### ~~Section 5. Use of Official Time Section 6. Provisions for Official Time~~

- A. ~~An employee must otherwise be in regular duty status in order to receive official time. (e.g., not for overtime, non-travel compensatory time, leave time)~~
- B. ~~Subject to the provisions of this Article, contractual official time may be granted for performance of the following representational activities:~~
  - 1. ~~Representing employees and/or the Union in a grievance or arbitration filed under Article 7 & 8 of this Agreement;~~
  - 2. ~~Representing the Union at Union-initiated meetings with Management;~~
  - 3. ~~Representing the Union at Management-initiated meetings;~~
  - 4. ~~Receiving employee complaints and grievances relating to working conditions;~~
  - 5. ~~Receiving and reviewing Management proposals for changes in conditions of employment of bargaining unit employees, when the representative has been identified to the national Director of Labor Relations or regional LRO as the Union representative responsible for such review;~~
  - 6. ~~Official time may be used for Union-sponsored labor relations or other training which is of mutual benefit to the Parties and has been approved in advance by the Agency. The Union will make application for this use through the National Director of Labor Relations or designee;~~
  - 7. ~~Representing the bargaining unit at formal discussions with Management;~~
  - 8. ~~Representing an employee during any examination of the employee per 5 USC 7114(a)(2)(B) (Weingarten Meeting);~~
  - 9. ~~Preparations of proposals for negotiations;~~
  - 10. ~~Presentation of training on the National Agreement;~~
  - 11. ~~Contacting members of Congress, their staff, or committees for representational matters including conditions of employment and pending legislation. Union representatives attending the NFFE legislative lobby week will receive official time for the time spent presenting their views to Congress and the Executive Branch on conditions of employment;~~
  - 12. ~~Travel to perform representational duties; or~~
  - 13. ~~Mediation sessions, directly associated with resolutions of grievances or complaints.~~
- C. ~~Union representatives who participate in processes before the FLRA will be granted official time as determined by the FLRA. The official time authorized by the FLRA is not subject to the limitations contained in **Section 2** of this article.~~
- D. ~~Union representatives who represent bargaining unit employees before the MSPB or EEOC as their personal representative are not subject to the limitations contained in **Section 2** of this Article; they will receive official time as granted by MSPB and/or EEOC. Time for personal representatives in the Agency informal EEO process is~~

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~~subject to approval by OCR and not subject to the limitations contained in Section 2 of this Article.~~

- ~~E. Representatives shall be granted official time not subject to the limitations in Section 2 to accompany inspectors on safety and health inspections conducted in accordance with Article 13 of this Agreement.~~
- ~~F. Union representatives involved in negotiations shall receive statutory official time for time spent in negotiations, including mediation and attendance at impasse proceedings. Union negotiators receiving statutory official time will be equal in number to Management representatives. This official time is not subject to the limitations established in Section 2 of this Article. This provision does not apply to time spent in preparation for negotiations.~~
- ~~G. Time shall not accumulate from one representative to another, nor from pay period to pay period.~~
- ~~H. The Union representative has sole discretion to determine what constitutes the appropriate amount of official time a representative uses for representing a bargaining unit employee.~~
- ~~I. Should Management believe there has been a pattern of abuse of official time provisions by any NFFE representative, the National Labor Relations Director will initiate a dialogue with the National NFFE President or designee. No official time will be arbitrarily denied based on any suspicion of abuse. Should the Union suspect that Management is inappropriately denying official time, the National NFFE President or designee will initiate a dialogue with the National Labor Relations Director.~~
  - ~~A. Consistent with 5 U.S.C. 71 and this Agreement, union representatives will be granted official time, subject to availability as described below, for only the following representational activities:
    - ~~1. Term Negotiations (OPM Code 70)—to negotiate a collective bargaining agreement, in accordance with 5 U.S.C. 7131(a).~~
    - ~~2. Mid-Term Negotiations (OPM Code 71)—to negotiate over issues raised during the life of a term agreement, in accordance with 5 U.S.C. 7131(a).~~
    - ~~3. Dispute Resolution (OPM Code 72)—to appear in proceedings before the Federal Labor Relations Authority during such time as an employee would otherwise be in a duty status, in accordance with 5 U.S.C. 7131(c).~~
    - ~~4. General Labor-Management Relations (OPM Code 73)—to prepare for term and mid-term negotiations and perform miscellaneous representational activities authorized under 5 U.S.C. 7131(d), subject to availability of hours in the Union Bank as described below.~~~~
  - ~~B. Union bank. Total available hours of official time per fiscal year for activities covered by 5 U.S.C. 7131(d) is calculated by one-half hour per bargaining unit employee (e.g. 1/2 hour x 1,000 bargaining unit employees = 500 hours available) as of October 1 for the activities identified in Section 5.A.4. Unused union bank hours do not carry over into the next fiscal year.~~
  - ~~C. Individual Union representatives shall spend at least three-quarters (75%) of their paid time, measured each fiscal year, performing agency business or attending~~

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necessary training (as required by their supervisor), in order to ensure that they develop and maintain the skills necessary to perform their agency duties efficiently and effectively

- D. Union representatives may be authorized official time hours and Leave Without Pay on a fiscal year basis, not to exceed 25% of their established annual tour of duty (subject to the bank noted in Section 5.B.) in the performance of Union representational activities as described in Section 5.A., with the exception of Section 5.E. below.
- E. Union representatives who reach the 25% cap may be authorized official time in accordance with sections 7131(a) or 7131(c) of title 5, United States Code. Time for these activities are charged to the union bank for that fiscal year, notwithstanding that time in the union bank would otherwise be used for activities covered by 7131(d). However, if the union bank has been exhausted, time will be charged to the union bank for the following fiscal year (or years).
- F. Prior to a representative entering a work area or performing representational activities, the representative must obtain the consent of the immediate supervisor in charge of the work area. The representative shall provide the supervisor with the name of the employee, the general purpose of the visit, and how long the employee is expected to be away from duty. The employee must obtain agreement of the supervisor or designee prior to meeting with the union representative.
- G. Representatives will make every effort to perform their Union representational duties effectively and efficiently.

### **Section 5. Release to Perform Representational Duties Section 7. Official Time Requests and Reporting Procedures**

- ~~A. Union representatives who are on 100% official time will report to his/her Union office to perform their representational functions when not in travel status or teleworking. When 100% Union representatives travel within their region but do not require travel orders, they will notify their supervisor or designee of their intended location(s). The Parties agree to continue the Memorandum of Understanding concerning Telework for NFFE Union Representatives, effective January 12, 2012 and incorporate the Memorandum into this Agreement as Appendix C.~~
- ~~B. The release procedures contained in this section only apply to less than 100% official time representatives.
  - 1. When Union representatives need official time to perform their representational duties, it will be requested on an individual, case-by-case basis. Union representatives are required to obtain approval from their immediate supervisor or designee before using official time under this Agreement. If the supervisor or designee is not available, the Union representative will leave a message for the supervisor or designee. Normally, if a Union representative requests release, in accordance with the terms of this Article, to perform a representational function, release should be granted immediately so long as staffing and workload permit.~~

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~~When release cannot be accomplished immediately, the representative will be released as soon as possible.~~

- ~~2. This release should, generally, be of short duration, normally less than one day. However the Parties recognize that some circumstances may warrant release for one day or more. In those cases the Union representative should seek release in advance. If a supervisor would otherwise approve a request for annual leave for that time from the employee, the supervisor should normally approve the request to use official time.~~
- ~~3. If the representative requires one hour or more official time than what was originally approved by the supervisor, he/she will obtain advanced approval for the additional time from the approving official. If the approving official is not available, the Union representative will leave a message and will document the time used in accordance with **paragraph B(1) of Section 5** above upon his/her return.~~
- ~~4. When a Union representative has completed the use of official time, that representative will notify his or her supervisor or designee, if available, upon returning to his/her work station. If the supervisor or designee is not available, the representative will email or leave a message with his/her supervisor or designee to notify the supervisor or designee of the time of his/her return.~~
- ~~5. Management may delay or reschedule approved official time in the event unforeseen workload requires such adjustment.~~
- ~~6. Supervisors and Union officials will cooperate in scheduling the use of official time so as to best meet the needs of the Agency for customer service and the needs of the Union to provide representation to the bargaining unit.~~
- ~~A. Requests for release from their GSA work assignment/workstation to perform representational duties using official time must be initiated utilizing the Agency's Time and Attendance System by completing an absence request. The Union representative's immediate supervisor shall determine how far in advance of the anticipated official time use the request must be submitted.~~
- ~~B. Advanced approval from the immediate supervisor must be obtained by a Union representative. Any employee who uses official time without advance supervisory approval will be considered absent without leave and subject to appropriate disciplinary action.~~
- ~~C. Union representatives must identify the proper Time Reporting Code (TRC) for their representational activities.~~
- ~~D. The following information must be included in the request for each representational activity he/she wishes to perform:
  - ~~1. The location where the representative will be performing the representational activity;~~
  - ~~2. The specific reason(s) for requesting official time, including what the issue /complaint is and providing sufficient detail to identify the specific representational tasks the representative will perform so the supervisor can determine if the time requested is reasonable, necessary and in the public interest; and~~~~

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3. The date and projected start & end times for each representational activity. (Example - 1:00pm - 2:00pm on 10/31/19)
- E. A separate request and approval for any use of official time in excess of previously authorized hours, or for purposes for which such time was not previously authorized, shall be required.
- F. A separate request for official time must be submitted and approved for each OPM Category.
- G. When a union representative has completed the use of official time, that representative will notify his/her supervisor upon returning to his/her work station. If the supervisor is not available, the representative will email or leave a message with his/her supervisor to notify him/her of the employee's return to work.
- H. If a Union representative completes the representational activity in less time than approved, he/she will notify the supervisor and submit an amendment to the original request.
- I. If Management is unable to approve a request for official time, the reason for denial will be provided. If an operational need does not permit the representative to use the official time when requested, Management will generally make a reasonable effort to allow the employee to use the requested official time within two workdays, keeping in mind the interests of the Union, as well as the needs of the Agency.

### **Section 6. Information to be Provided for Release Requests**

~~When a Union representative requests release (this can be done by email) to use official time, he/she must provide the following information to his/her supervisor:~~

- ~~A. The approximate amount of official time that will be needed, and~~
- ~~B. The location where the representative will be performing the representational duties, and~~
- ~~C. A general description of the representational duties (e.g., employee complaint, formal discussion, Weingarten meeting, pre-decisional involvement meeting with management, grievance meeting, ULP investigation).~~

### **Section 7 8. Visiting Work Areas**

When any Union representative enters work areas to meet with unit employees during duty time in the work area, he/she will obtain approval from the supervisor ~~of~~ that work area. Any pre-arranged meeting during duty hours with a unit employee will be cleared with the supervisor of the employee.

### **Section 8 9. Documenting and Reporting of Official Time**

~~All Union representatives shall document their use of official time in accordance with procedures and methods established by agreement by the Parties. Failure to abide by those procedures may result in the loss of contractual official time. An employee serving as a Union Representative is responsible for accurately recording their official time use in accordance with Agency policy.~~

**Section 8. Documenting and Reporting of Official Time**

**Section 10. Leave Without Pay**

A union representative may request leave without pay to engage in union activities (LWOP) that would be permitted under 7131(d). LWOP does not count against the union bank. No agency employee shall be permitted to spend more than 25% of their established annual tour of duty on official time, LWOP, or any combination thereof, except as provided for by Section 6.D. of this article. All requests for LWOP to perform representational activities must include in the comments section of the absence request "LWOP is for official time". Management will consider requests for LWOP and determine whether to grant the leave without pay. The denial of LWOP for union representational activities cannot be grieved or disputed in any forum.

~~**Section 9. Lists of Representatives**~~

- ~~A. The National Council President or designee will provide the National Director of Labor Relations or designee with a list of designated Union representatives. The list will include each representative's name, duty station, and telephone number. The Agency will post, and update the list, as needed, on its Intranet. In addition, the Union will advise the National Director of Labor Relations of any deletions, additions, or changes at least two (2) workdays in advance of the effective date.~~
- ~~B. Within thirty (30) days of the effective date of this Agreement, NFFE will provide a current listing of Union representatives to the National Director of Labor Relations.~~

~~**Section 10. Changes to Official Time**~~

~~Provisions pertaining to contractual official time may only be negotiated or addressed at the National level.~~

~~**Section 11. Union-Sponsored Training**~~

~~Official time may be used for Union-sponsored labor relations training which is of mutual benefit to the Parties and approved in advance by the Agency. The Agency will grant the following amounts of time each year of the contract:~~

~~Representative authorized 100% official time ..... No Limit  
All other Representatives ..... 40 hours~~

~~The Union will make every effort to submit two weeks in advance to the appropriate Human Resources representative, a copy of the agenda, if available, or a written description which gives the subject matter, the duration, purpose, and nature of the training.~~

~~**Statements of Intent for Article 6**~~

- ~~A. The Parties agree that there will be no posting on the Intranet of substitute representatives who will be in place for two (2) pay periods or less. (Section 3)~~
- ~~B. The designee may include the Regional Labor Relations Officer. (Section 4(B)(6))~~
- ~~C. It is understood that any lobbying activities must be permitted by law. (Section 4(B)(11))~~

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- ~~D. The Union representative and his/her supervisor or designee will work out the appropriate notification process to be used. The Parties agree that Union representatives while not at their Union office will be available via their cell phone. (Section 5(A))~~
- ~~E. This section does not prevent a Union representative from requesting official time in advance. (Section 5(B)(1))~~
- ~~F. The Parties expect these instances to be rare. (Section 5(B)(5))~~
- ~~G. The Parties agree that no more than a general description is required by the Union representative. However, the description given must pertain to the specific request being placed. (Section 6(c))~~
- ~~H. This provision is not intended to limit the rights of the Union representative to administer all the functions of this Agreement. In exercising these rights the Parties understand that it is in the best interest of the Parties to avoid undue disruption of other employees' work. (Section 7)~~
- ~~I. For the purposes of this section it is intended that the designated individual be one (1) representative designated by the National Council President or equivalent. (Section 9(A))~~
- ~~J. Normally a two (2) week period of advance notice would need to be provided for a change to a newly designated NFFE one hundred percent (100%) representative. (Section 9(A))~~
- ~~K. Either Party can approach the other, and by mutual agreement negotiate contractual official time at the National level. (Section 10)~~

## ARTICLE 7 - GRIEVANCE PROCEDURES

### Section 1. Purpose and General Principles

- A. The purpose of this Article is to provide a mutually-acceptable method for prompt and equitable resolution of grievances for bargaining unit employees and the Parties.
- B. The Parties fully support the informal resolution of grievances. The Parties agree that most grievances arise from misunderstandings which can and should be settled promptly and satisfactorily on an informal basis at the immediate supervisory level.
- C. The Parties will make every effort to ensure that grievances and complaints are resolved in an orderly, prompt, and equitable manner that shall maintain the self-respect of the employee and be consistent with the principles of good management and the public interest.
- D. The Parties agree that the initiation of a grievance in good faith by an employee should not cast any reflection on his/her standing with his/her supervisor or his/her loyalty to the organization. The Parties' representatives shall not discriminate against employees for exercising their right to file a grievance pursuant to this Article. The grievance should not be considered a negative reflection on the Supervisor.
- E. It is in the best interest of resolution of disputes that the Agency conduct such fact-finding as deemed appropriate by the Agency and engage in good faith consideration of the issues and information presented in the grievance procedure.
- F. The Parties agree that the time frames in this Article will be strictly adhered to, absent a mutually agreed upon extension.
- G. Union representatives may not use official time to prepare or pursue grievances (including arbitration of grievances), unless the grievance is solely on their own behalf.

### Section 2. Definitions

- A. "Grievance" means any eligible complaint:
  - 1. By any bargaining unit employee (BUE) concerning any eligible matter relating to the employment of the employee, or
  - 2. By the Union concerning any eligible matter relating to the employment of any bargaining unit employee BUE, or
  - 3. By any bargaining unit employee-BUE, the Union, or by the Agency concerning--
    - a. The effect or interpretation, or a claim of breach, of this a collective bargaining aAgreement; or
    - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting BUEs' conditions of employment;
- B. "Grievant" means the person, group or institution on one on whose behalf an eligible the complaint is filed.
- C. ~~An "institutional grievance" is a grievance filed by the Agency or the Union on its own behalf.~~

## 20079 Agency proposals ARTICLE 7 - GRIEVANCE PROCEDURES

- ~~E. A "regional-level grievance" is filed in the region only by the Regional Vice President (RVP) or the National Council President (NCP) or designee or the Regional Labor Relations Officer (RLRO), the National Director of Labor Relations (NDLR), or designee involving matters that are limited in scope to one Region.~~
- ~~F. A "local-level grievance" is filed by a Local-level Union Official designated by the National Council President or designee or the RLRO or designee involving matters that are limited in scope to one Local within a Region.~~
- ~~G. A "national-level grievance" is a grievance involving: (1) more than one Region, Service (e.g. PBS), or Staff Office (e.g. OCFO); (2) filed by the Agency or the Union on its own behalf over disputes involving interpretation of this Agreement; or (3) disputes which the Parties agree are National in scope. A national-level grievance is filed only by the National Council President or designee or the National Director of Labor Relations (NDLR) or designee.~~
- ~~H. A "group grievance" is a grievance filed by the Union on behalf of two or more bargaining unit employees involving the same facts and the same issue(s).~~
- ~~J. An "employee grievance" is a grievance filed by an employee; or a grievance filed by the Union on behalf of an employee.~~
- C. "Abeyance" is the period of time the clock is stopped from running on a time frame under this Article.
- D. "Toll" means the act of suspending the time clock from running.
- E. "Day" means calendar day, unless stated otherwise. If any due date established by this Article falls on a Saturday, Sunday, or holiday, the next official business day will be considered the due date.
- F. "For purposes for filing requirements under this Article, filing date/response due dates for this Article means on or before 11:59 p.m. local time for the sender.

### Section 3. Available Procedure

This negotiated grievance procedure will be the only procedure available to bargaining unit employees or the Parties for the processing and disposition of grievances as defined in Section 2 of this Article ~~and for the identification, in Section 5, of matters excluded from the process, except that~~ ~~However, an~~ employees may choose a statutory appeal process or the negotiated grievance procedure but not both concerning matters for which a statutory choice of procedure exists. The Parties agree that a choice on any given matter is made when the grievance or appeal is formally filed in writing with the appropriate Management official for grievances and the appropriate authority for statutory appeals.

### Section 4. Representation

A grieving employee will have the right to be represented by a Union official (~~not on official time~~) at each step of the grievance procedure or to represent himself/herself. In the event the employee chooses not to have a Union official as his/her representative, a Union official will have the right to attend ~~grievance meetings including~~ settlement discussions. ~~The grievant may have up to two (2) Union Representatives; one (1) primary representative on official time, and one (1) non-primary representative not on official time. Release of the non-primary representative will not be arbitrarily denied. The~~

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~~Deciding Official may have one (1) additional attendee. The number of attendees cited above may be increased by mutual agreement. Should the Agency use more than the Deciding Official plus one, the non-primary Union official who is an employee will also be granted official time.~~

For an individual employee-filed grievance ~~where the employee has chosen not to be represented by the Union,~~ the Agency will not recognize any representative other than the employee himself/herself. or a representative designated by the Union. ~~The role of the employee-requested representative, if approved and designated by the Union, will be determined by the Union. The Union is entitled to have one Union representative at the meeting on official time.~~

### **Section 5. Matters Excluded from the Grievance Procedure**

The following matters are excluded from the Grievance Procedure:

1. An alleged violation relating to prohibited political activities (Subchapter 3 of Chapter 73 of Title 5);
2. Retirement, life insurance, health insurance;
3. A suspension or removal for national security purposes (5 U.S.C. 7532);
4. An examination, certification, or appointment;
5. The classification of any position which does not result in the reduction in grade or pay of an employee;
6. Termination of probationary employees, absent a statutory exception;
7. Performance standards (but not the application of the standards);
8. Non-selection for a position (but not procedures used or qualification determinations);
9. A complaint under 29 CFR 1614.102 of the government-wide regulations on Equal Employment Opportunity or a complaint of discrimination under 5 U.S.C. 2302 (b)(1)(A), (B), (C), and (D) that has been filed under the statutory EEO complaint procedure; this exclusion does not apply to allegations of discrimination as an affirmative defense in a grievance of a suspension, removal, demotion, or denial of within grade increase;
10. ~~The assignment of ratings of record;~~
11. ~~The award of any form of incentive pay, including time-off awards, cash awards; quality step increases; or recruitment, retention, or relocation payments;~~
12. ~~Any dispute concerning decisions to remove any employee from Federal Service for misconduct or unacceptable performance, or other adverse action decisions;~~
13. ~~Other Government-wide benefits (e.g. long term care, TSP).~~
14. Any issue otherwise excluded by law.

### **~~Section 5.~~ Section 6. Pre-filing Investigation**

The Parties recognize the Union's right to investigate a situation giving rise to a grievance or proposed disciplinary action. Witnesses will be released when requested by the Union unless work conditions require their presence on the job. When release cannot be accomplished immediately, the witnesses will be released normally within

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one (1) work day.

### ~~Section 6.~~ **Section 7. Requirements for All Grievances**

All formal grievances filed under this Agreement must be in writing and must include the following:

- A. A brief written statement of the issue or occurrence which gives rise to the grievance;
- B. If appropriate, the provision(s) of law, regulation, or this Agreement alleged to have been misinterpreted, misapplied, or violated;
- C. The remedy sought;
- D. Whether a meeting is requested;
- E. If the employee is represented by the Union, the name of the Union Representative;
- F. Any **and all** evidence or information relevant to the issue if known and available to the Union. **The submission of evidence beyond the initial filing step of the dispute will not be accepted or considered throughout the grievance/arbitration process.**

### ~~Section 7.~~ **Section 8. Method for Filing Grievances**

- ~~A. The preferred method for filing grievances is electronically. Electronic filing must be sent by 11:59pm in the time zone of the sender. All grievances filed electronically against the Agency will be filed at the email address [nffe-grievances@gsa.gov](mailto:nffe-grievances@gsa.gov). Grievances filed electronically against the Union will be filed with the GSA Council President or designee. The subject line of the grievance will state either "NFFE Grievance" or "GSA Grievance". Supporting documentation, as defined in Section 6, if not attached to the electronic submission, will be filed with the NDLR/RLRO or designee within two (2) working days of filing the grievance.~~
- ~~B. In-person filing of a Local, regional, individual or group grievance against the Agency must be filed with the RLRO, designee or supervisor within the chain of command of the grievant. In-person filing of a national level and Institutional grievance against the Agency will be filed with the RPMDLR or designee. In-person filing of a Local or regional level grievance against the Union must be filed with the RVP or designee. In-person filing of a national level or institutional level grievance against the Union must be filed with the GSA Council President or designee. All grievances filed in-person must be received by 5:00pm at the location where filed.~~
- ~~B. Institutional, group, national and regional grievances must be filed within thirty (30) days of the incident giving rise to the grievance, or within thirty (30) days after the Union became aware or should have become aware of the matter out of which the grievance arose.~~
- ~~C. Any and all evidence to support the filing of a grievance must be included at Step 1, or the initial Step where the dispute was filed.~~

### ~~Section 8.~~ **Section 9. Informal Resolution of Grievances**

The Parties may agree to hold the filing of the formal grievance in abeyance to proceed with an informal process which includes a meeting with the aggrieved Party and the first level supervisor to resolve the complaint at the lowest level. If the complaint cannot be

resolved in the informal process at the lowest level then the grievant may proceed to the formal process.

**Section 9. Section 10 Formal Grievance Procedure**

A. STEP 1

1. Formal Grievance –All Grievances ~~other than expedited grievances~~ must be filed within thirty (30) days of the incident giving rise to the grievance, or within thirty (30) days after the ~~aggrieved employee Party~~ becomes aware of or should have reasonably become aware of the matter out of which the grievance arises. ~~or is a continuing violation.~~  
Electronic Filing: The ~~preferred~~ method for filing grievances is electronic ~~and ally.~~ Electronic filing must be sent by 11:59pm in the time zone of the sender. All grievances ~~filed electronically~~ against the Agency ~~will~~ **must** be filed at the email address ~~XXXXXXXXXXXX~~ **nffe-grievances@gsa.gov**. Grievances filed electronically against the Union will be filed with the GSA Council President or designee. The subject line of the grievance will state either “NFFE Grievance” or “GSA Grievance”. Supporting documentation, as defined in Section ~~67~~, **must be filed with the initial grievance submission. if not attached to the electronic submission, will be filed with the NDLR/RLRO or designee within two (2) working days of filing the grievance.**
  - a. In-person Filing: ~~In-person filing of a Local, regional, individual or group grievance against the Agency must be filed with the RLRO, designee or supervisor within the chain of command of the grievant. In-person filing of a National level and Institutional grievance against the Agency will be filed with the NDLR or designee. In-person filing of a Local or regional level grievance against the Union must be filed with the RVP or designee. In-person filing of a national level or institutional level grievance against the Union must be filed with the GSA Council President or designee. All grievances filed in-person must be received by 5:00pm at the location where filed.~~
2. Meeting - If a meeting is requested by the grievant/Union/Agency or the deciding official, it will be held within fifteen (15) days of the submission of the written grievance, unless mutually agreed otherwise. The **Grievance** Deciding Official for Step 1 would ordinarily be either the second line or third line supervisor. ~~Both Parties agree that having face-to-face meetings is the preferred method for resolving grievances. However there may be circumstances where participants are unable to meet face-to-face such as not being geographically co-located. In these circumstances some or all participants may participate in the meeting remotely through video, electronic or telephonic means. Statements such as “The Union would be willing to meet with the Agency” shall not be interpreted as a request for a meeting.~~
3. Agency Response - The **Grievance** Deciding Official, will respond in writing within ~~f~~**Fifteen (15) days** of either the meeting or receipt of the grievance if no meeting is requested. The response will contain the name of the Step 2 **Grievance** Deciding Official, if full relief is not granted.

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### B. STEP 2

1. Written Appeal of Step 1 Decision - An appeal of a decision in Step 1 must be submitted in writing to the Step 2 **Grievance** Deciding Official within fifteen (15) days after the Step 1 response is issued.
2. Meeting - If a meeting is requested, it must be held within ~~f~~**Fifteen (15)** days after receipt of the appeal at Step 2, unless mutually agreed otherwise. ~~The Deciding Official in Step 2 will be the Regional Commissioner, Deputy Regional Commissioner, or designee (at least at level GS-15).~~ Statements such as "The Union would be willing to meet with the Agency" shall not be interpreted as a request for a meeting.
3. Agency Response - The **Grievance** Deciding Official responding to the **Step 2** grievance will reply in writing within ~~f~~**Fifteen (15)** days of either the meeting or receipt of the grievance if no meeting is requested.

### C. Alternative Dispute Resolution – For ~~non-adverse action~~ grievances the Parties are encouraged to use Alternative Dispute Resolution (ADR) (mediation) at any time during the grievance process.

1. The use of ADR will be by mutual agreement.
2. If agreed to, the Parties will jointly request the services of the Federal Mediation and Conciliation Services (FMCS) or other mutually-agreed mediator.
3. The mediation will be conducted in accordance with the process established by the mediator.
4. If ADR is used, if necessary the time periods will be tolled during the period of the ADR process. After notice from the Mediator that the ADR/Mediation process has ended, the processing of the grievance is no longer tolled and the clock resumes the following work day.
5. ADR will take place within thirty (30) days from the request unless extensions are mutually agreed upon.
6. **Any cost associated with this service shall be split by the Parties.**
7. **Any recommendations of the mediator or any settlement discussions shall not be used as evidence during any official, binding, third-party procedure.**

### D. Invoking Arbitration - If the remedy requested is not granted in Step 2, the National Council President, Regional Vice President or designee may invoke arbitration for the Union within thirty (30) days of receipt of the decision letter or within thirty (30) days from the end of the Agency's response period.

### **~~Section 10. Mediation~~**

~~A grievant who files a grievance on an adverse action using the process contained in Section 11 has available to them the Mediation process as described in this section. The Parties, with the consent of the grievant, agree to the use of the services of the Federal Mediation and Conciliation Service (FMCS) for adverse action grievances. The process will be used as a non-binding attempt at dispute resolution regarding adverse actions before the invocation of arbitration.~~

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- ~~A. Each adverse action grievance will be dealt with on a case-by-case basis.~~
- ~~B. The Party requesting the use of mediation will submit its request to the other Party within ten (10) days after receipt of the Step 2 decision.~~
- ~~C. The Party initiating the request will be responsible for notifying and requesting the services of the FMGS. Any cost associated with this service shall be alternated by the Parties.~~
- ~~D. The Parties agree to cooperate with the efforts of the mediator.~~
- ~~E. Any recommendations of the mediator or any settlement discussions shall not be used as evidence during any official, binding, third-party procedure.~~
- ~~F. The use of the mediation process will serve to toll the time parameters for invoking arbitration until one or both Parties decide the mediation process has not been successful. "Success" is defined by the Parties as reaching an agreement that resolves the dispute.~~
- ~~G. The request for mediation does not prevent the Agency from imposing the adverse action penalty.~~

### **Section 11. Expedited Employee Grievance Procedure**

#### **A. Application**

~~This section applies to grievances over suspensions for over fourteen (14) days, and conduct and performance-based removals.~~

#### **B. One-Step Expedited Grievance Procedure**

- ~~1. Written Grievance – The grievance must be filed with the Management Official identified in the decision letter within fifteen (15) days of receipt of such decision letter. If the employee is raising an affirmative defense to the action being grieved, the grievance should include an explanation of the affirmative defense and the basis for asserting the affirmative defense.~~
- ~~A. Meeting – If a meeting is requested, it must be held within ten (10) days after receipt of the grievance, unless mutually agreed otherwise.~~
- ~~2. Agency Response – The Deciding Official will respond in writing within ten (10) days of receipt of the appeal or within ten (10) days of the date of the meeting, whichever comes later.~~
- ~~3. Invoking Arbitration – If the remedy requested is not granted, the RVP or designee may invoke arbitration within ten (10) days of receipt of the decision or within ten (10) days of the end of the Agency's response period, whichever is later.~~

### **Section 12. Institutional Grievances**

- ~~A. Written Grievance – The Union or the Agency shall raise the grievance in writing within thirty (30) days of the incident giving rise to the grievance, or within thirty (30) days after the Union or the Agency becomes aware or reasonably should have become aware of the matter out of which the grievance arises. The grievance shall be filed in accordance with Section 9(A)~~

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- ~~B. Meeting—If requested by either Party, the grievance may be discussed informally by the NDLR or RLRO (or their designee) and the Union representative within fifteen (15) days of receipt of the grievance.————~~
- ~~C. Agency Response—The NDLR/RLRO (or designee) will respond to the grievance in writing within fifteen (15) days of either (1) the meeting or (2) receipt of the grievance, if no meeting is held.~~
- ~~D. Union Response—The NCP/RVP (or designee) will respond to the grievance in writing within fifteen (15) days of either (1) the meeting or (2) receipt of the grievance, if no meeting is held.~~
- ~~E. Invoking Arbitration—If the institutional grievance is not satisfactorily resolved, either Party may invoke arbitration within thirty (30) days of receipt of the decision or within thirty (30) days of the end of the Agency or Union response period, whichever is later. Any matters or issues not contained in the written grievance shall not be raised before the arbitrator.~~
- ~~F. Grievances arising over the interpretation of the language in this Agreement which are not resolved at the Local or regional level must be submitted to the Parties at the National level for resolution within fifteen (15) days of the receipt of the Step 2 Local or regional decision or when the decision was due.~~
- ~~G. Once a grievance has been submitted to the National level under E, above, Parties at the Local or regional level may not proceed to an arbitration hearing until the grievance has been settled or released by the National Parties. The National Parties will settle or release the grievance within thirty (30) days, unless mutually agreed otherwise. Notification procedures for invoking arbitration in accordance with this Article will apply.~~

### ~~Section 13.~~ **Section 11 Miscellaneous**

- ~~A. Any time limits in this Article may be extended on a case-by-case basis by mutual agreement; such extensions shall be confirmed in writing.~~
- ~~B. Any step in the grievance procedure may be waived by mutual agreement on a case-by-case basis; such waivers shall be confirmed in writing.~~
- ~~C. The Agency shall provide the Union with a copy of each formal employee grievance filed without Union representation, at each step of the grievance procedure.~~
- ~~D. If the Grievant/Union files a grievance or elevates a grievance that the Agency has determined to be untimely, the Agency will continue to process the grievance in accordance with this Article. If the Agency fails to respond timely at Step 1, the grievant/Union will contact the appropriate LRO to ascertain the identity of the Step 2 Decision Maker. If the Agency fails to respond timely at Step 2, the Union may invoke arbitration.~~
- ~~C. The Parties agree to make a good faith effort to meet all time limits. Failure by the grievant or Union to meet time limits or to request and receive an extension of time shall automatically cancel the grievance, unless mutually agreed otherwise by the Parties.~~
- ~~D. Employees may use a reasonable amount of duty time, as determined by the Supervisor, to prepare or pursue grievances brought on the employee's own behalf; or to appear as a witness in any grievance proceeding.~~

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- E. Remote employees receive no travel reimbursement for pursuing grievances.

### Statements of Intent for Article 7

- ~~A. Notice of Union or Management designee(s) will be given in writing. (Article 7)~~
- ~~B. Other Government-wide benefits (e.g. long term care, TSP) even though not addressed in the list of exclusions from the Grievance Procedure are considered excluded. (Section 2(B))~~
- ~~C. Group Grievances may be concerning the same or different Supervisors, but must concern the same issue. (Section 2(I))~~
- ~~D. It is the intent of the Parties that the grievances under Section 3 will be filed in accordance with Section 7.~~
- A. The **designated primary** Union representative will be the point of contact for all purposes under the grievance procedure. If the **designated primary** representative on either side changes for any reason, reasonable written notice will be given to the other side. (Section 4)
- ~~B. The secondary representative in the grievance process will be an observer and not an active participant. (Section 4)~~
- ~~C. If the Union Representative is an Agency employee, he/she will be on official time in an employee-filed grievance, performing the function of an observer in a formal discussion. (Section 4)~~
- ~~D. Both Parties will make a good faith effort to share information as it becomes available during the grievance process, and especially before arbitration is invoked. (Section 5)~~
- ~~E. The Parties will come to agreement on the level (Local, regional, or National) of grievances being filed. (Section 7)~~
- ~~F. Remote employees receive no travel or time for in-person submissions. (Section 7(B))~~
- ~~G. Examples of circumstances where remote participation in meetings may be necessary include where the Parties are not geographically co-located or when one or more participants are not physically (medically) able to meet. (Section 9(A)(2))~~
- ~~H. The technical logistics of remote participation is the Agency's responsibility. (Section 9(A)(2))~~
- ~~I. Any recommendations of the mediator or any settlement discussions shall not be used as evidence during any official, binding, third-party procedure. (Section 9(C))~~
- ~~J. Both Parties agree that from the day mediation is invoked the time clock will be tolled until the process is completed. (Section 10)~~
- ~~K. After notice from the Mediator that the ADR/Mediation process has ended, the processing of the grievance is no longer tolled and the clock resumes the following work day. (Section 9(C) and Section 10(F))~~
- ~~L. An "adverse action" refers to suspensions for more than 14 days, involuntary reduction in pay or grade, disciplinary or performance-based removals or furloughs over 30 days. (Section 10)~~

## ARTICLE 15 - PERFORMANCE APPRAISAL SYSTEMS

### Section 1. General

This Article sets forth the procedure and requirements the Agency will follow in implementing an appraisal system consistent with applicable law, regulation and Agency policy for bargaining unit employees.

### Section 2. Policy

- A. Performance appraisal systems applicable to employees will be fair, equitable, and in accordance with ~~OPM regulations including 5 C.F.R. Parts 430 and 432-law, government-wide regulation, Agency policy, and this Agreement.~~
- B. The Agency will follow GSA policy governing performance plans and appraisals and this Agreement to evaluate the performance of employees. The Agency will ~~provide~~ continue to make available necessary training to employees relative to their duties and responsibilities under this system.
- C. The Union will be notified at the National level and provided the opportunity to bargain, consistent with law, over any change to the Agency performance appraisal system.
- D. The Agency agrees that the Union has an interest in the performance standards established for employees. The Agency further agrees to notify the Union at the National level during the development and revision of templates of model performance standards (at the Agency level), and to give consideration to the Union's ideas and suggestions. The Union will be provided copies of the finalized templates.
- E. ~~The Agency will make performance standards established for the various occupational series available for the Union's review and to give consideration to the Union's ideas and suggestions before finalizing the standards for those series. Upon request, the Agency will provide a briefing to the Union.~~

### Section 3. Definitions

- A. Critical element - A work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that the employee's overall performance is unacceptable.
- B. Performance standard - The Management-approved expression of the performance threshold(s), requirements(s), or expectations(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.
- C. Appraisal - The process under which performance is reviewed and evaluated.
- D. Rating period - The period of time for which an employee's performance will be appraised and a performance rating issued. The period is normally one year in length and must be at least one hundred and twenty (120) days to result in a summary rating. The standard annual rating period is October 1 through September 30.
- E. Signature - Any signature required in this Article may either be in hard copy or electronic.

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- F. Performance Assistance Plan (PAP) - Used for employees who are performing at Level 2.
- G. Performance Improvement Plan (PIP) - Used for employees who are performing at Level 1.
- H. Performance Plan - All of the written, or otherwise recorded, performance elements that set forth expected performance. A plan must include all critical ~~and non-critical~~ elements in their performance standards.

### **Section 4. Critical Elements and Performance Standards**

- A. The Agency will establish critical elements and related performance standards for each position which will permit the accurate evaluation of job performance on the basis of criteria related to the position. The supervisor will utilize the official position description in developing the critical elements.
- B. A performance plan identifying the critical elements and performance standards of the position will normally be developed within thirty (30) days after the beginning of each permanent assignment or any detail or temporary promotion that is expected to last one hundred and twenty (120) days or longer. No performance plan is complete until it is approved and issued to the employee. Performance plans may be modified at any time, but changes will not retroactively be applied to appraise an earlier period of performance unless by mutual agreement. Employees will be offered an opportunity to acknowledge receipt of their performance plan. Employees will not be required to back-date their signature on performance plans absent valid and proper reasons and by mutual agreement between the manager and the employee.
- C. Critical elements and performance standards must be consistent with the duties and responsibilities contained in the employee's position description **or identified as needing to be changed for the position description to be accurate**. On details where new performance standards are issued, the standards should be consistent with the new duties assigned to the employee while on the detail.
- D. Bargaining unit employees will be given the opportunity for substantial participation in the development of the performance plan against which the employee's performance will be appraised. It is important for supervisors to encourage the participation of employees in the development of the employees' performance plans. At the employee's request and with the consent of the supervisor, the Union will be permitted to attend the meeting for purposes of assisting the employee in the development of the performance plan.
- E. Employees cannot be held responsible for meeting critical elements and performance standards until they are made aware of and have been given copies of the elements and standards. The Agency will answer employee questions or questions from a Union representative (when present) as to what is necessary to achieve each level of performance. Training that is mandatory and that can impact a performance rating should be identified by the supervisor in writing.
- F. Critical elements ~~non-critical elements~~ and standards may be changed in any given performance period, provided that, if changed, the employee must be under the new standards or elements for at least one hundred and twenty (120) days prior to the summary rating **for the new plan**. Any time an employee changes positions, new performance elements will be administered in

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accordance with this Article. If there is no change to the employee's performance plan, the employee ~~should~~ **will** be so notified.

- G. Upon receipt of a new performance plan, an employee shall be given **a reasonable amount of time** ~~no less than five (5) work days~~ to review, comment, and suggest changes or additions.
- H. After discussion of the critical elements and performance standards has been completed, the supervisor and the employee will complete and sign the official form ~~and initial, date, and number each page documenting the employee's performance plan. A copy will be furnished to the employee. An electronic copy will be available to the employee.~~ An employee has a right to note disagreement with the performance standards ~~on the form.~~ The performance plan is developed and maintained in the Agency's electronic system. ~~However, the actual signed document with comments is maintained by the supervisor in a separate supervisory file that is accessible to the employee. Upon the employee's request, at the time an appraisal (e.g., midterm, interim, or final) is submitted, attachments will be included and uploaded into the electronic system by the supervisor, including the signed PDF version of the performance plan with comments and documentation.~~
- I. ~~The employee's written comments about the final performance plan and the actual signed performance plan, which are placed in the supervisory performance file, will be provided to the employee prior to being placed in the file.~~ Any documents used during a mid-year, interim, or final appraisal, ~~placed in the supervisory performance file, should~~ **will** be ~~available shown~~ to the employee at the time of the discussion. ~~, and the supervisor will notify the employee that he/she will be provided copies upon request.~~
- J. Once critical elements and performance standards for a position have been developed, they do not necessarily need to be changed when the position's incumbent is changed. However, the new incumbent will be given an opportunity to review and comment on the performance plan before the performance plan will be used to appraise the new incumbent's performance.
- K. Supervisors and employees will use this opportunity to mutually develop or update Individual Development Plans (IDPs) in accordance with **Article XX**, Training and Career Development of this Agreement. At the performance review, the supervisor will discuss the employee's professional growth needs and avenues to meet those needs.
- L. Delays in establishing performance plans should be infrequent and based on unusual circumstances.
- M. For any subsequent changes to the performance plan, the employee will have an opportunity to be advised of the change and to comment in response to the change, in the official system of record.

### **Section 5. Midpoint and Other Progress Reviews**

- A. Employees will be given a performance review at least semi-annually. At least one review should take place at the approximate midpoint of the rating period, but no later than forty-five (45) days after the midpoint. Additional reviews ~~may~~ **will** be given as the supervisor deems appropriate or ~~upon the employee's request if a significant change is noted to the employee's performance.~~

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- B. During performance reviews, the supervisor will provide an objective review of assignments on which the employee has performed, or had an opportunity to perform, since the beginning of the rating period, and feedback concerning the level of performance in each critical element. The supervisor will document the review ~~and provide the employee with a copy~~. The supervisor ~~should will~~ also ~~make available provide~~ documents relied upon in performing the review, upon request from the employee. The employee may request that the supervisor upload written comments into the Agency's electronic system.
- C. The supervisor will inform the employee during the review ~~whether the employee's performance to date remains consistent with the overall rating received on the last annual rating as to the overall performance and the general status of each critical element~~. This review does not require assignment of a level to each element or a calculation of the exact summary rating similar to the annual review.
- D. With the consent of the supervisor, the employee may have a Union representative present for the progress review.

### Section 6. Annual Performance Rating

- A. After completion of the rating period, a performance rating will be completed, approved, and issued to the employee within forty-five (45) days and in accordance with Agency procedures contained in the Order on performance appraisals. The document ~~original copy should shall~~ be signed by both the employee and the supervisor at the time the employee receives the rating. ~~Once the employee rating is implemented in the Agency's electronic system, the Agency will not make any additional changes to the rating of record, as contained in the electronic system, without notice to the employee and an opportunity to sign and make comments to the revised document.~~
- B. Employees will be evaluated only for work assigned during the rating period. An employee's performance will not be adversely affected by work not assigned.
- C. An employee ~~will should~~ be given the opportunity to provide a concise written summary of relevant performance accomplishments (self-assessment) to the rating official by the last day of the rating period. The rating official will consider the information provided in the summary when preparing the rating. Upon request from the employee, the supervisor will also provide documents relied upon in performing the review. The summary will be forwarded with the recommended rating to the reviewing official, if appropriate. This summary will not preclude the employee from making written comments or presenting evidence for inclusion in the performance file.
- D. In preparing the rating, the supervisor will ~~rate based on work performed against the applicable standards. make appropriate allowances for work-related factors beyond the control of the employee which may have made it difficult to meet the written performance standards for a particular critical element, or to achieve a particular level of summary rating.~~
- E. A justification for a summary rating ~~other than Level 3 should must~~ be completed in writing and made a part of the employee's performance appraisal file. Each employee will have access to the electronic rating ~~be given a copy of the rating~~ and any related documentation.

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- F. When issuing the rating, the supervisor **should will** give the employee an opportunity to discuss the rating or other factors relevant to performance appraisal.
- G. If the supervisor and employee do not agree on the rating, the employee may note this in writing for inclusion with the rating of record. The employee may submit written comments and other relevant materials **for management** to upload into the Agency's electronic system. **Ratings of record are not subject to the grievance/arbitration procedure.**
- H. Employees serving on temporary assignments (e.g., details or temporary promotions) for one hundred and twenty (120) days or more during the annual rating period **may** receive an interim rating covering the period of the temporary assignment. The interim rating, **if given**, will be considered in the overall review. 'Considered in' means reviewing the interim rating and deciding whether the interim rating impacts the overall summary rating.
- I. The Agency's expectation is that departing supervisors will prepare summary ratings for employees they supervise. If this expectation is not met, then the expectation is that the next-level supervisor will prepare summary ratings for employees who did not receive a summary rating. ~~If a new supervisor has not been in place for one hundred and twenty (120) days to issue an annual rating, the summary rating will be applied.~~ Where a new supervisor issues a new performance plan during the performance cycle, the employee will not be evaluated under that new plan, for that performance period, unless it has been in place one hundred and twenty (120) days prior to the end of the performance cycle. When the employee has not worked under any performance plan for one hundred and twenty (120) days during the performance period or is undergoing a PAP or a PIP, the rating period will be extended. If this extension goes beyond the period for which awards are calculated, the employee will be made whole once the annual review is provided, **budget permitting**. The timeframe for processing payment of awards for employees whose rating period was extended will be consistent with the timeframe for paying out awards after the normal performance period.
- J. An employee who performs at the Level 3 or higher level is considered to be performing at an acceptable level of competence for the purpose of eligibility for a within-grade increase. An employee whose summary rating is at Level 2 or below is not eligible for a within-grade increase.
- K. Reviews will be conducted in accordance with Agency policy. The performance rating official cannot serve as both the rating and reviewing official, **unless under an approved exception in the APPAS Order**. The reviewing official shall **ordinarily** be at least one level above the rating official.
- L. An employee's signature on the appraisal form indicates only that the appraisal has been received, not an employee's agreement with the appraisal.
- M. With the consent of the supervisor, the employee may have a Union representative present for a performance review. Employees who are concerned about the results of a performance review may request the presence of a Union representative at any related follow-up discussions concerning the review.

### **Section 7. Minimally-Successful Performance**

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- A. At any time a supervisor or rating official judges an employee's pattern of performance to be at Level 2 **or below** in one or more critical elements, the supervisor will inform the employee of the pattern of performance in writing.
- B. The supervisor will provide specific information on the critical element(s) that the employee is falling below a Level 3. The supervisor will develop a written Performance Assistance Plan (PAP). The PAP will identify the specific criteria and actions that are needed to meet level 3.
- C. The supervisor will assist the employee during the PAP period and will use options that are both appropriate and feasible, which may include the following:
  - 1. The supervisor and employee meeting to discuss the expectations under the PAP and allowing the employee to ask questions regarding those expectations.
  - 2. Giving the employee the opportunity to work with a fully-successful employee who can provide coaching and feedback of an informal nature.
  - 3. Discussing with the employee whether additional training is appropriate.
- D. **Ordinarily,** ~~t~~The Agency will provide written notice within thirty (30) days after the end of the PAP as to whether or not the performance has improved above Level 2.
- E. Employees who perform at Level 2 will not be demoted or removed under 5 CFR 432 solely for the Level 2 performance.
- F. Telework arrangements may be reviewed on a case-by-case basis to determine whether a telework arrangement needs to be modified to meet the requirements of the plan.

### **Section 8. Unacceptable Performance**

- A. When the supervisor observes that an employee's performance is unacceptable in one or more critical elements, the supervisor will inform the employee in writing of the observed pattern of performance and provide the employee an opportunity to improve by developing a written performance improvement plan (PIP). Notification **should must** allow time for improvement prior to being given a final summary rating. The purpose of the PIP is to assist the employee in improving performance to the **minimally fully** successful level (**Level 2**). The PIP will give an 'opportunity period' of **generally** not **longer less** than **thirty (30) sixty (60)** days for the employee to improve performance. Depending on the nature of the work, a longer 'opportunity period' may be appropriate, **solely at the supervisor's discretion**. The PIP will specify, as appropriate, the counseling, training, coaching and any other specific actions to be accomplished within the 'opportunity period'.

If an employee would be given an unsatisfactory rating at the end of the performance year and has not been placed on a PIP with respect to the same critical element during the performance year, the rating period will be extended and the employee should be placed on a PIP. Upon completion of the PIP, a final rating will be given. The employee will be given the following information (in writing):

- 1. An explanation of those aspects of performance in which the employee's performance falls below Level 2,

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2. A detailed explanation of what must be done to bring his/her performance up to at least Level 2,
  3. A statement that his/her performance may result in a reassignment, demotion or removal if the employee does not demonstrate performance at Level 2 or higher during the PIP period.
- B. During the PIP period, the supervisor or designee will conduct regular meetings with the employee to provide feedback regarding the employee's progress under the current performance improvement plan. At the employee's request, a Union Representative can participate in the meetings, provided that no delay to the meeting results.
- C. Within ten (10) work days after the end of the PIP period, the employee will be notified as to whether he or she successfully completed the PIP.
- D. If the supervisor determines to extend the period of the PIP, he/she will notify the employee in writing.
- E. The requirement for issuing a performance improvement plan does not apply to those employees serving a probationary or trial period, or to temporary or certain term employees.
- F. If, after being given the opportunity to improve, the employee continues to fail to meet performance standards for one or more critical elements (as indicated by achieving at least minimally acceptable performance), the Agency will consider reassignment, demotion or removal of the employee from his/her position, as appropriate.
- G. If the Agency considers it necessary to effect a demotion or removal for unacceptable performance under the procedures listed in the applicable law and regulation, the Agency will follow applicable procedures. The employee will be provided with a final written decision on or prior to the effective date of the action. The decision letter will contain the notification of appeal and grievance rights, **if applicable**.
- H. The Agency will comply with law, ~~rule~~, government-wide regulation, Agency policy, and this Agreement in taking actions against employees under this Article.
1. If the Agency proposes to effect a demotion or removal, any such action, if taken under the procedures of 5 U.S.C. Chapter 43 (432 actions), the proposal will be issued at least thirty (30) days in advance of the final decision notice and will include:
    - a. The specific instances of unacceptable performance,
    - b. The employee's right to reply to the proposal orally and/or in writing within fifteen (15) calendar days to the deciding official and to be represented by the Union.
    - c. The timelines set out in this section can be extended by mutual agreement of the Union and the Agency or of the employee and the Agency as applicable.
  2. The final written decision by the Agency will:
    - a. Be concurred with or issued by an official who is in a higher position than the official who proposed the action,
    - b. Be received by the employee at or before the time the action will be effective, and
    - c. Provide notification of appeal or grievance rights which includes Merit Systems Protection Board and negotiated grievance procedure rights, **if applicable**.
- I. In 432 actions, only instances which were stated in the proposal letter may be cited as the basis for the action; however, any improvements in the employee's performance during the notice

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period may be cause for reconsideration of the action. Actions taken under 5 USC Chapter 75 (752 actions) are subject to the provisions of **Article XX**, Discipline.

### **Section 9. Denial of Within-Grade Increases/Step Increases**

#### A. General Schedule Employees – Within-Grade Increases/Step Increases

1. An employee under the General Schedule (GS) who is paid at less than step 10 of the grade of his/her position and is not subject to a salary cap must be advanced in pay to the next higher step provided the employee has completed the required waiting period, has not received an equivalent increase during the waiting period, and is performing at an acceptable level of competence.
2. An employee under this system who is performing at least at a fully-successful level (Level 3) shall be considered to be performing at an acceptable level of competence. Therefore, when the employee is informed in writing of the critical elements and performance standards for his/her position, he/she will be informed of the acceptable level of competence. An employee whose summary rating is at Level 2 or below is not eligible for a within-grade increase.
3. If a within-grade increase is denied for a general schedule employee, the employee will be informed in writing of the reason(s) for the negative determination and the right to seek reconsideration.
4. The Agency will provide written notice to the employee of the right to request reconsideration and the notice will include:
  - a. That the employee's request must be in writing and submitted to the Agency within fifteen (15) days of receipt of the negative determination,
  - b. The name and email address of the person to whom the request for reconsideration is to be **submitted delivered**,
  - c. That the employee, if otherwise in a duty status, will be granted a reasonable amount of official time to review the material that is the basis of the negative determination and to prepare a request, and
  - d. That the employee has the right to be represented by the Union.
5. The Manager will issue a decision on the request for reconsideration within thirty (30) calendar days **of receipt of the employee's reconsideration request. ~~who receives a request for reconsideration will establish a reconsideration file, which will contain all pertinent documents relating to the negative determination. He/she~~**
  - a. If the reconsideration decision is to grant the within-grade increase, the decision will be made retroactive to the first day of the first pay period when the employee would have otherwise been eligible for the increase.
  - b. If the reconsideration decision is to deny the within-grade increase, the notice of the decision will inform the employee of the right to file a grievance under the negotiated grievance procedure, **if applicable**.

### **Section 10. Performance Records**

- A. To the extent appropriate, supervisors will maintain records of performance supporting performance reviews and annual ratings which may include, as appropriate:

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1. What work was assigned,
  2. When it was assigned,
  3. What instructions, written or oral, were given concerning:
    - a. Time requirements, if a factor,
    - b. Cost requirements, if a factor,
    - c. Quality requirements,
    - d. Quantity requirements,
    - e. Process requirements (e.g., steps to follow, a procedure to use),
    - f. Other requirements.
  4. When assignments were past due,
  5. When assignments were cancelled or transferred to other employees, and
  6. When assignments were completed and whether they met, failed to meet, or exceeded standards.
- B. The annual overall rating will be kept on file for the period specified in OPM regulations.
- C. Materials supporting the denial of a within-grade increase will be maintained until any grievances or appeals are adjudicated.
- D. The employee and the Union, with the employee's written consent, have a right to a copy of the records relied upon to support the denial or reconsideration decision.
- E. Performance records are subject to Section 7 of **Article XX**, Employee Rights.

### **Section 11. Successful Performance**

An annual rating of at least fully-successful or level 3 will be the basis for an employee in a non-competitive career-ladder position to be promoted to the next level of the ladder, provided time-in-grade criteria and other applicable requirements are met.

### **Section 12. Appraisal System Information**

- A. The Agency will **continue to** advise employees of the provisions of the performance appraisal system including the definition of and significance of critical elements, the purposes of performance standards, the relationship of performance appraisal to awards, within-grade salary increases, and completion of probation, the use of GSA appraisal system forms, and the purposes of performance reviews.
- B. Should the Agency schedule general training sessions for employees on the appraisal system, **a** Union representatives may attend.

### **Section 13. Special Circumstances**

- A. Negative effects on ratings shall not be based on errors resulting from employee reliance on erroneous information or material from a supervisor.
- B. If employees are given assignments for which they have no prior knowledge or experience, they will be given appropriate direction or training **after making known to their supervisor that they lack this prior knowledge or experience.**

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- C. Performance appraisals must make allowances for work-related factors beyond the employee's control, authorized absences for union representational duties, and requested and approved leave. The assignment and evaluation of work will take into account the amount of time a Union representative is in work status (*i.e.* not utilizing official time).

### **Statements of Intent Article 15**

- ~~A. The Parties anticipate that the Agency will revise its policy on performance management (including appraisals and awards) during the term of this Agreement. The Agency intends to engage NFFE in active pre-decisional involvement in this revision process. Any changes which affect this Article will be subject to law, regulation and this Agreement. (Article 15)~~
- ~~B. Delays in establishing performance plans should be infrequent and based on unusual circumstances. (Section 4(B)) [Language was inserted into Section 4]~~
- ~~C. For any subsequent changes to the performance plan, the employee will have an opportunity to be advised of the change and to comment in response to the change, in the official system of record will be signed, initialed, and dated by the employee. (Section 4(H)) [Language was inserted into Section 4]~~
- ~~D. This review does not require assignment of a level to each element or a calculation of the exact summary rating similar to the annual review. (Section 5(C)) [Language was inserted into Section 5]~~
- ~~E. Employee submissions for uploading need to be reasonable in length and may include such items as self-assessment and customer feedback. (Section 6(G))~~
- ~~F. 'Considered in' means reviewing the interim rating and deciding whether the interim rating impacts the overall summary rating. (Section 6(H)) [Language was inserted into Section 6]~~
- ~~G. The timeframe for processing payment of awards for employees whose rating period was extended will be consistent with the timeframe for paying out awards after the normal performance period. (Section 6(I)) [Language was inserted into Section 6]~~
- ~~H. This issue is covered in 5 CFR 531.404(a). (Section 6(J))~~
- ~~I. In rare circumstances where there is no higher-level management official above the rating official, they could be the same person. (Section 6(K))~~
- ~~J. The timelines set out in this section can be extended by mutual agreement of the Union and the Agency or of the employee and the Agency as applicable. (Section 8(H)(1)) [Language was inserted into Section 8]~~

## ARTICLE 30 – DISCIPLINE

### Section 1. Definition

For the purposes of this Article, disciplinary actions are defined as warning notices, official reprimands, suspensions, removals, and demotions resulting in reductions in grade or pay.

### Section 2. Actions Excluded

The provisions of this article do not apply to:

- A. A suspension or removal under Section 5 U.S.C. 7532 (National Security),
- B. A reduction in grade or removal under 5 U.S.C. 4303 (performance),
- C. Actions initiated under CFR 1209 (Whistle Blower Protection),
- D. Emergency suspensions under the "crime provision" of 5 U.S.C. 7513 (b) (1),
- E. The termination of a probationary, trial period or temporary employee,
- F. The termination of intermittent employees due to lack of funds or work.

### Section 3. Policy- Penalty Determination

A. In order to determine the appropriate penalty for an offense, such as a disciplinary or adverse action, the Agency will apply appropriate law, government-wide regulation, and Agency policy.

B. The Parties recognize that the use of progressive discipline is at management's sole and exclusive discretion. It is understood that progressive discipline need not follow any specific sequence of disciplinary actions and that some offenses may be cause for severe action, including removal, irrespective of whether previous disciplinary or adverse actions have been taken against the offending Employee.

C. The Agency shall determine when the need arises for disciplinary or adverse actions. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation.

D. The Parties agree that the objectives of ~~disciplinary discipline measures~~ are to prevent the recurrence of misconduct, to correct employee behavior, and to maintain discipline and morale among other employees. The Parties further agree that emphasis will be placed on preventing situations that result in disciplinary actions. The Agency will not store up criticisms, but will discuss any perceived problems with employees as soon as such problems arise.

E. Disciplinary actions will be taken for just and sufficient cause to promote the efficiency of the Service. ~~All such actions shall be based on standards equitably applied to all employees.~~

F. ~~Disciplinary actions will normally be progressive in nature consistent with the prevention of further misconduct. However, major offenses may be cause for severe action, including removal, even if no previous discipline has been taken against the employee.~~ Supervisors and deciding officials are not required to use progressive discipline in all cases. The penalty for an instance of misconduct should be tailored to the facts and circumstances. All proposed and issued penalties resulting in discipline, other than written reprimands or warnings, must be reasonable and will be determined utilizing the factors set forth in Section 3H below.

G. Any penalty guide or other such documents are only advisory in nature.

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H. A number of factors, commonly referred to as the “Douglas Factors” (*Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981)) are relevant for the Agency’s consideration in determining the appropriate penalty. After consideration of these factors the Agency may, in some circumstances, decide to select a penalty less than (or even greater than) those specified in the Agency’s Penalty Guide. Those factors generally recognized as relevant include the following:

1. The nature and seriousness of the offense, and its relation to the employee's position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including fiduciary role, contacts with the public and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the Agency’s confidence in the employee's ability to perform assigned duties;
6. The consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. The consistency of the penalty with the Agency’s Penalty Guide;
8. The notoriety of the offense or its impact upon the reputation of the Agency;
9. The clarity with which the employee was put on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. The potential for the employee's rehabilitation;
11. Any mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

I. Suspension should not be a substitute for removal in circumstances in which removal would be appropriate.

### **Section 4. General**

#### A. Privacy of Corrective Discussion

Discussions with employees regarding conduct or corrective measures will be conducted in private to avoid embarrassment.

#### B. Representational Rights

Employees have the right to request Union representation for an investigative meeting which the employee reasonably believes could result in discipline against him/her; this right is commonly referred to as a “Weingarten Right.” If the employee requests Union representation and a representative is not immediately available, the Agency will:

- 1) cancel the meeting,
- 2) delay the meeting for a reasonable period of time until representation can be secured, or

3) continue the meeting but assure the employee in writing that discipline will not be taken based upon what is said at the meeting.

C. Documentation

1. When a disciplinary action is initiated (*i.e.*, a warning notice, reprimand or proposal notice is issued) the employee will be given the opportunity to review all the evidence relied upon by the Agency which forms a basis for the reasons and specifications of the action. If the action is based on an investigative report, those portions of the report that relate to the specifications will be made available to the employee. The information that will be made available to the employee will comply with Privacy Act and 5 U.S.C. 7114.
2. Upon request, the employee will be given a copy of the evidence referenced in C1, above, if provided electronically. Two copies will be furnished if hard copies are given.
3. The text of the final decision will contain a statement of the employee's representational and grievance ~~rights (including the phone number of the Local Union office) and/or MSPB rights, if applicable. The Union will furnish the phone numbers for each region.~~

D. Expectation of Timeliness

1. Disciplinary action should be timely. Timely does not mean that disciplinary action should be taken in haste.
2. The Parties agree that a timely request for a reasonable extension of the time limits in this Article will normally be granted. The Parties agree that a "timely request" for an extension means the request, including appropriate justification, is submitted in writing to the appropriate Management official before the deadline expires.

E. Criminal Charges

The Agency may postpone initiating disciplinary action for offenses related to pending criminal charges. ~~In such cases the time limits in D, above, will begin when the Agency is informed of the final resolution of the criminal matter.~~

**Section 5. Letters of Instruction/Counselling**

A letter of instruction/counselling is an informal notification from the Agency to an employee that certain actions are inappropriate and advising that if such actions occur in the future disciplinary action may result. Letters of instruction/counselling are not placed in an employee's Official Personnel Folder. Meetings in which employees are initially in an instructional or counselling session regarding their conduct may become an investigatory meeting, whereby the employee has a right to a Union representative if the Agency official begins an examination and the employee has a reasonable belief providing information could lead to discipline.

**Section 6. Procedures - Warning Notices and Reprimands**

Warning Notices

A warning notice is a letter of reprove for an infraction (ordinarily a first offense not too serious in nature). A copy will be placed in the employee's Official Personnel Folder for a period of one (1) year. It may be withdrawn earlier upon request of the employee, at the Agency's discretion.

A. Official Reprimands

A reprimand is a formal notice of censure for a serious incident of misconduct, or

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repetition of an infraction for which the employee has been previously warned. A copy will be placed in the employee's Official Personnel Folder for a period up to three (3) years. It may be withdrawn earlier, upon request by the employee and at the Agency's discretion.

### B. Taking Corrective Action

The Agency is normally responsible for investigating possible misconduct and initiating disciplinary action. Except where a formal record sufficient to take discipline already exists, such as a report of investigation conducted by the Office of Inspector General or a court record, the Agency should follow these procedures:

- Interview the employee who has allegedly committed an offense.
  - Interview witnesses and any others who can provide pertinent information.
  - Try to reconcile any conflicting statements or other evidence. Re-interview the parties concerned, if appropriate.
1. Where the Agency requests in writing using a document other than GSA Form 225, the Agency will inform the employee in writing that "this is part of an inquiry into the facts that may lead to corrective action."
  2. Before issuing a warning notice or reprimand, the Agency must discuss the incidents giving rise to the discipline with the employee or permit the employee to review and comment on a GSA Form 225, Record of Infraction, or other written report or description of the incidents. A 225 or other written report must be prepared when the Agency is recommending action to a higher level. Employees will normally be given no more than five (5) working days to review and comment on the report. A reasonable amount of official time will be allowed to prepare a response to the report. Employees will have the opportunity to consult a union representative when drafting a response to a 225 form, or the written report.
  3. A copy of all statements, letters and/or investigative reports, if any, upon which the Form 225 or other written report is based will be included with the written report for the employee's review.
  4. The Agency will not select the specific disciplinary action to impose or recommend until after discussing the incidents with the employee or reviewing the employee's response to the written report as appropriate.
  5. Upon request, the Agency will discuss the basis for the final decision with the employee and/or the employee's Union representative. If a warning notice or reprimand is issued, the employee will be informed of the right to grieve the action under Article 7.
  6. The employee will be given a copy of any other written document(s) not previously provided which was/were relied upon in issuing the warning notice or reprimand.
  7. If the Agency determines that no disciplinary or corrective action is required after following the steps in this Section, the employee will be so informed.
  8. If the Agency proposes to eliminate all use of Form 225, it will provide notice and an opportunity to bargain over such proposal to the Union.

### **Section 7. Procedures - Suspension, 14 Days or Less**

#### A. Proposal Letter

When the Agency proposes to take a disciplinary action consisting of a suspension of fourteen (14) days or less, the employee will be issued a proposal letter. The

letter will include at least fifteen (15) calendar days' advance notice commencing on the date of the employee's receipt of the proposal letter. No decision on the proposed penalty will be effected prior to the expiration of the fifteen (15) day advance notice. The proposal letter will also include specific reasons for the issuance of the letter and contain reply rights as specified in this section.

B. Employee's Response

1. Upon receipt of the proposal letter, the employee will have not less than fifteen (15) calendar days to answer orally, in writing, or both and to furnish affidavits and other documentary evidence in support of the response. The time limit for response will be specified in the proposal notice.
2. The employee has the right to be represented by a representative of his or her choice during this procedure. In limited situations, it is recognized that Agency ethics officials may identify a conflict of interest and disallow a representative. The reasons for any such determination must be put in writing.
3. When an employee chooses to make an oral reply, the reply will be heard by the deciding official or designee (The Parties are including "or designee" to address the situation where the deciding official named in the proposal letter is not available. The Parties agree the person who hears the oral reply should make the decision). The employee will be provided with a copy of the Agency summary.

C. Agency Decision

1. In arriving at his/her written decision, the deciding official will consider only the reasons specified in the notice of proposed action and will consider any reply of the employee or his/her representative.
2. The deciding official shall issue a written decision, including the reason(s) therefore, at the earliest possible date following receipt of the employee's response or after the response period if there is no employee response. The decision will be issued within fifteen (15) calendar days following the response period unless the employee's response raises issues that require further investigation or may impact the decision.

**Section 8. Procedures - Suspensions of More Than 14 Days, Reduction In-Grade or Pay and Removals**

A. When the Agency proposes to suspend for more than fourteen (14) days, reduce in grade or pay or remove an employee, the employee is entitled to:

1. ~~The extent practicable, the written notice of adverse actions should be limited to the 30 days prescribed in section 7513(b)(1) of title 5, United States Code. At least thirty (30) calendar days' advance written notice~~ The notice should state stating the specific reasons for the proposed action and informing the employee of his/her right to review the material on which the proposal is based and which is relied on to support the reasons in the notice of proposal.
2. Fifteen (15) calendar days to answer orally or in writing and/or both. (Upon request, the employee will be provided with a reasonable amount of official time to review the material relied upon to support the proposal notice, to prepare an answer and to secure affidavits or other documentary evidence in support of an answer.)
3. The employee has the right to be represented by a representative of his or her

choice during this procedure. In limited situations, it is recognized that Agency ethics officials may identify a conflict of interest and disallow a representative. The reasons for any such determination must be put in writing.

4. The rights of the Union under this Agreement will not be construed to preclude an employee from being represented by an attorney or other representative; however, if the employee elects the appellate procedures established by law, the employee will be responsible for arrangements and costs associated with such an appeal.
  5. A written decision and the specific reasons therefore at the earliest possible date following the employee's response. The decision will inform the employee of his/her appeal rights.
- B. When an employee chooses to make an oral reply, the reply will be heard by the deciding official or designee (The Parties are including "or designee" to address the situation where the deciding official named in the proposal letter is not available. The Parties agree the person who hears the oral reply should make the decision).
  - C. The final decision in any action covered by this section must be made by the deciding official or designee. The final decision letter will contain the specific reasons for the decision and will be issued at the earliest possible date after receipt of the employee's oral reply and/or written reply or after the date that such reply would have been due.
  - D. The Agency will prepare a summary of any oral reply. The employee will be provided a copy of the Agency summary.
  - E. In arriving at his/her written decision, the deciding official will consider only the reasons specified in the notice of proposed action and will consider any reply of the employee or his/her representative. The notice of final decision including the effective date of the action will be issued to the employee at or before the time the action will be effective.

### **Section 9. Appeal of Disciplinary Action**

- A. Written warnings, reprimands or suspensions for fourteen (14) days or less are grievable under Article 7 of this Agreement.
- B. ~~Statutory procedures and appeals (e.g., before the Merit Systems Protection Board) provide exclusive redress for alleged violation of employee rights involving appealable adverse actions under this Article. Pursuant to 5 U.S.C. § 7121(a)(2), disputes over appealable adverse actions arising under this Article shall not be subject to the negotiated grievance and arbitration procedures.~~
- C. ~~Suspensions of more than fourteen (14) days, reductions in grade or pay, and removals may be appealed within thirty (30) calendar days to the Merit Systems Protection Board or may be grieved under Article 7 of this Agreement.~~

### **Section 10. Harmful Error**

In accordance with 5 U.S.C. 7701(c)(2), an otherwise valid disciplinary action may only be overturned for procedural error if the employee shows that the error caused substantial harm or prejudice to his/her rights such that if the error had not been made, the Agency might have reached a different conclusion on the appropriate discipline to impose.

### **Section 11. Union Copy of Documents**

~~An employee who receives one of the following documents from the Agency will be furnished one additional copy of the document which states at the top of the first page in capital letters "UNION COPY,"~~

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- ~~1. Instruction or warning;~~
- ~~2. Reprimand;~~
- ~~3. Proposed disciplinary action; and~~
- ~~4. Decision to take disciplinary action.~~

### **Section 12. ~~Section 11.~~ Off-duty Misconduct**

Disciplinary action, if taken, must be based on activity which, if verified, would have some nexus (i.e., some relationship) to the employee's position. The Parties agree that the conduct of employees while off duty shall not result in disciplinary action except when there is a nexus between the conduct and the employee's official position.

### **~~Statements of Intent for Article 30~~**

- A. ~~(Section 4(D)(2))~~ Language placed in Section 4(D)(2)
- B. ~~(Sections 7(B)(3) & 8(B))~~ Language placed in Section 7(B)(3) & 8(B)

## **ARTICLE 8 - ARBITRATION**

### **Section 1. Basis for Appeal**

If the remedy requested is not granted in the final step of the grievance procedure in accordance with Article 7, only the Union or the Agency may invoke arbitration.

### **Section 2. Notification of Invoking Arbitration**

- A. Union notification must be submitted pursuant to Section 1, above, within thirty (30) days of receipt of the decision at the final step of the grievance procedure or within thirty (30) days of the end of the Step 2 deciding official response time limit. The preferred method for filing a notification is via electronic mail. Notification by electronic mail must be sent to email box **XXXXXXXXXXXX@gsa.gov** by 11:59pm in the time zone of the sender. The subject line of the message must state "Notice of Arbitration". In-person delivery must be delivered to the NDLR or designee, and must be received by 5:00pm on the 30th day.
- B. The Agency will notify the Regional Vice President (RVP) for Regional grievances, National Council President (NCP) or designee for National level grievances in accordance with the procedures in paragraph A, above.

### **Section 3. Statement of Issue**

The Parties shall communicate in advance of the arbitration hearing in an attempt to agree on a joint submission of the issue(s) for arbitration. If the Parties fail to agree on a joint submission, each Party will prepare a statement of what it believes the issue(s) to be. The Parties will exchange these statements of the issue(s) at least five (5) days in advance of the scheduled arbitration hearing date. The arbitrator will have final authority to determine the issue(s) to be decided.

### **Section 4. Selecting the Arbitrator**

- A. Within thirty (30) days from the notice of the arbitration invocation, absent mutual agreement of the Parties the invoking party will submit a request for a list of seven (7) potential arbitrators from the Federal Mediation and Conciliation Service (FMCS). The Party which invokes shall pay for the list of arbitrators. Nothing precludes the Parties from mutually agreeing to an arbitrator outside the FMCS process contained in this Article.
- B. In seeking the list, the requesting Party or Parties will seek candidates experienced in Federal Labor-Law and located in the geographic area where the hearing will occur. The Parties agree that a condition of selection of an arbitrator is that the arbitrator will not impose a requirement of interim payment prior to the issuance of an award.
- C. Within ten (10) days after receipt of such list the Agency and the Union shall communicate to select an arbitrator. If the Parties cannot agree on an arbitrator from the list, the Parties shall alternately strike names from the list; the Union shall exercise the first strike. After each Party has struck three names from the list, the remaining person shall serve as the arbitrator. If either Party refuses to participate in

the selection process, the other Party will make a selection of an arbitrator from the list.

- D. This provision does not prohibit the Parties from mutually agreeing on an arbitrator through other mutually agreeable procedures.

### **Section 5. Arbitration Hearing**

- A. Upon selection of the arbitrator in a particular case, the respective representatives for the Parties will communicate together with the arbitrator and each other in order to select a mutually-agreeable date for the arbitration hearing. The Parties will endeavor to schedule the hearing within sixty (60) days after the arbitrator is selected. In no instance will an arbitration be held more than one hundred and eighty (180) days from the date arbitration was invoked. If the arbitrator cannot conduct the hearing within the desired one hundred and eighty (180) days, the Parties will request a new list and select an alternate arbitrator.
- B. The Parties will jointly request the arbitrator to render a decision within thirty (30) days of the date of hearing or receipt of post-hearing briefs, unless agreed otherwise by the Parties.
- C. Arbitration hearings will be held on the Agency's premises, unless the Parties mutually agree on another location.
- D. The Parties agree that generally the grievant and the deciding official in a grievance over a disciplinary or adverse action shall participate in person.
- E. The arbitrator's decision shall be final and binding, unless a timely exception is filed with the Federal Labor Relations Authority (FLRA) or other appeal filed with the appropriate forum.
- F. If either Party wants to submit a post-hearing brief, both Parties will be given the opportunity to submit a post-hearing brief. The arbitrator will determine the date the post-hearing briefs are due.

### **Section 6. Bargaining History**

Bargaining history testimony and/or affidavits in connection with bargaining history may not be used in an arbitration hearing unless one of the Parties has notified the other in writing at least fifteen (15) days prior to the hearing of its intent to use such testimony and/or affidavits.

### **Section 7. Arbitrability Determinations**

The arbitrator shall have the authority to make all arbitrability determinations if either Party submits such an issue, and will be required to make arbitrability determinations prior to addressing the merits of the original grievance. Either Party may require a separate hearing on the arbitrability issue before a hearing is held on the merits of the original grievance. The Party requesting the separate hearing on arbitrability will be responsible for the arbitrator's entire bill. If a hearing on arbitrability and a hearing on the merits are held, separate arbitrators shall hear the arbitrability issue and the merits issue, unless the Parties mutually agree otherwise.

### **Section 8. Authority of the Arbitrator**

- A. The Agency and the Union agree that the jurisdiction and authority of the arbitrator will be confined exclusively to the grievance as stated on the record.
- B. An employee who is found to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the employee's pay, allowances, or differentials is entitled on correction of the personnel action to receive back pay in accordance with the Back Pay Act.
- C. The arbitrator may award reasonable attorney fees in accordance with 5 U.S.C. 7701(g). The arbitrator will have the authority to rule on the reasonableness of the requested award.
- D. The arbitrator shall have no power to add to, subtract from, disregard, alter or modify terms of this Agreement, or applicable laws, rules or regulations.
- E. Any award may not include assessment of expenses against either Party other than as agreed to in this Agreement.

**Section 9. Arbitration Fees and Assessments**

- A. The losing Party, as determined by the arbitrator, will pay all of the regular fees and expenses of the arbitrator hearing a case assigned to him/her. In determining who the losing Party is the arbitrator will only find one of the Parties to the arbitration to be the losing Party, except as outlined in the following paragraphs.
- B. Disciplinary Actions ~~and Adverse Actions~~ under 5 USC Chapter 75 (5 CFR 752): Where the arbitrator finds just cause for the action but mitigates the penalty, the arbitrator will apportion the cost of the arbitration as he/she determines between the Parties. Where the only question before the arbitrator is the appropriateness of the penalty for an offense, and the arbitrator mitigates the employee's discipline, the arbitrator will apportion the cost of the arbitration as he/she determines between the Parties taking into consideration such issues as the nature of the offense, the severity of the penalty imposed, and the degree to which the penalty has been mitigated.
- C. For performance-based actions under 5 USC Chapter 43 (5 CFR 432), the arbitrator will apportion the fees and expenses as he/she determines between the Parties.
- D. The arbitrator will have authority to award reasonable attorneys' fees in accordance with applicable laws, rules and regulations and shall specify in the initial award whether a petition for attorneys' fees may be filed and who may file.
- E. If a hearing is rescheduled or cancelled unilaterally, that Party will pay the full costs of rescheduling and/or the cancellation fees for the hearing. If the hearing is rescheduled or cancelled by mutual agreement both Parties will share the cost. For cases settled by mutual agreement and before an award is issued, regular fees and expenses of the arbitrator shall be shared equally or as the Parties have mutually agreed to in the settlement.

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arbitrator will apportion the cost of the arbitration as he/she determines between the Parties. Where the only question before the arbitrator is the appropriateness of the penalty for an offense, and the arbitrator mitigates the employee's discipline, the arbitrator will apportion the cost of the arbitration as he/she determines between the Parties taking into consideration such issues as the nature of the offense, the severity of the penalty imposed, and the degree to which the penalty has been mitigated.

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- D. The arbitrator will have authority to award reasonable attorneys' fees in accordance with applicable laws, rules and regulations and shall specify in the initial award whether a petition for attorneys' fees may be filed and who may file.
- E. If a hearing is rescheduled or cancelled unilaterally, that Party will pay the full costs of rescheduling and/or the cancellation fees for the hearing. If the hearing is rescheduled or cancelled by mutual agreement both Parties will share the cost. For cases settled by mutual agreement and before an award is issued, regular fees and expenses of the arbitrator shall be shared equally or as the Parties have mutually agreed to in the settlement.

#### **Section 10. Transcripts**

- A. The need for verbatim transcripts shall be determined by the Parties on a case-by-case basis. If the Parties agree that a transcript is necessary, the arbitrator and each Party will be provided a copy. The costs of mutually agreed to transcripts will be borne equally by the Parties.
- B. If one Party elects to obtain verbatim transcripts without the agreement of the other Party, the Party requesting the transcript will bear the cost of the transcript and must provide a copy to the arbitrator. If at a later date the other Party should desire a copy of the transcript they agree to split the fees, including court reporter and duplication costs.
- C. When either Party elects a verbatim transcript, it will be made by an authorized court reporter.
- D. The Parties agree that if a transcript by a court reporter is made of any hearing, that transcript is the official record. Either Party may record the hearing, but it will not be considered the official transcript.

#### **Section 11.. Pre-hearing Exchange of Documents**

The Parties will exchange lists of documents at least fifteen (15) days in advance of the hearing. This does not preclude the arbitrator from admitting other documents.

#### **Section 12.. Witnesses**

- A. The Parties will exchange lists of witnesses including a brief synopsis of proposed testimony at least fifteen (15) days in advance of the hearing. At that time the Parties will provide a copy of the witness list to the arbitrator. Either Party has the right to challenge these witnesses or the scope of witness testimony by raising the issues to

- the arbitrator within five (5) days of the exchange of the witness list. This does not preclude either Party from raising further challenges to witnesses at the hearing.
- B. The arbitrator will have final approval of witnesses. The Agency agrees to allow for a reasonable amount of duty time for grievant(s) and approved witnesses to prepare for and to participate in the arbitration hearing.
  - C. The Parties can neither require nor veto the other Party's decision to use telephone or video conference for its witnesses. If the Union chooses to have its witnesses present via video or telephone conference, the Agency will take care of the technical logistics involved in providing that testimony.
  - D. In situations where bargaining unit employees are being interviewed by an Agency representative in preparation for a proceeding, which does not include misconduct, before a third party, like arbitration, where the Union is either a party to the proceeding or acting as a representative, the Agency representative must comply with the following safeguards to mitigate the potentially coercive effects of the situation in order to protect employees' rights under the Statute. (Brookhaven Rights)
    - 1. Inform the employee of the purpose of the questioning, that his/her participation is voluntary, and that no reprisal will occur if he/she refuses;
    - 2. Ensure that the questioning occurs in a non-coercive (non-threatening) context, and;
    - 3. Limit the questions to the scope of the legitimate purpose of the inquiry, i.e., to the existence of relevant facts, as opposed to the Union's strategy or what questions the Union asked.

### **Section 13. . Miscellaneous**

- A. The arbitrator may retain jurisdiction as appropriate to implement his/her award in the case presented at arbitration.
- B. The arbitrator must abide by the applicable legal standards for the Federal sector.

### **Statements of Intent for Article 8**

- A. By mutual agreement the Parties may adjust the time frames for any provision of this Article.
- B. The Parties mutually agree that when there is a separate hearing held on arbitrability they will work together to expedite the selection of a second arbitrator for the hearing on the merits. (Section 7)
- C. It is the intent of this section that the arbitrator retains jurisdiction for all attorneys' fees petitions. (Section 9(D))
- D. The Parties agree that if a transcript by a court reporter is made of any hearing, that transcript is the official record. Either Party may record the hearing, but it will not be considered the official transcript.
- E. The Agency agrees to work with the Union to resolve problems concerning release of employee witnesses. (Section 12)
- F. This does not preclude other witnesses from participating in the arbitration hearing in-person. (Section 5(D) and Section 12)

## ARTICLE 30 – DISCIPLINE

### Section 1. Definition

For the purposes of this Article, disciplinary actions are defined as warning notices, official reprimands, suspensions, removals, and demotions resulting in reductions in grade or pay.

### Section 2. Actions Excluded

The provisions of this article do not apply to:

- A. A suspension or removal under Section 5 U.S.C. 7532 (National Security),
- B. A reduction in grade or removal under 5 U.S.C. 4303 (performance),
- C. Actions initiated under CFR 1209 (Whistle Blower Protection),
- D. Emergency suspensions under the "crime provision" of 5 U.S.C. 7513 (b) (1),
- E. The termination of a probationary, trial period or temporary employee,
- F. The termination of intermittent employees due to lack of funds or work.

### Section 3. Policy

A. The Parties agree that the objectives of **disciplinary measures** are to prevent the recurrence of misconduct, to correct employee behavior, and to maintain discipline and morale among other employees. The Parties further agree that emphasis will be placed on preventing situations that result in disciplinary actions. The Agency will not store up criticisms, but will discuss any perceived problems with employees as soon as such problems arise.

B. Disciplinary actions will be taken for just and sufficient cause to promote the efficiency of the Service. **All such actions shall be based on standards equitably applied to all employees.**

C. **Disciplinary actions will normally be progressive in nature consistent with the prevention of further misconduct. However, major offenses may be cause for severe action, including removal, even if no previous discipline has been taken against the employee.** All proposed and issued penalties resulting in discipline, other than written reprimands or warnings, must be reasonable and will be determined utilizing the factors set forth in Section 3 E below.

D. Any penalty guide or other such documents are only advisory in nature.

E. A number of factors, commonly referred to as the "Douglas Factors" (*Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981)) are relevant for the Agency's consideration in determining the appropriate penalty. After consideration of these factors the Agency may, in some circumstances, decide to select a penalty less than (or even greater than) those specified in the Agency's Penalty Guide. Those factors generally recognized as relevant include the following:

1. The nature and seriousness of the offense, and its relation to the employee's position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including fiduciary role, contacts with the public and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the

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- job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the Agency's confidence in the employee's ability to perform assigned duties;
  6. The consistency of the penalty with those imposed upon other employees for the same or similar offenses;
  7. The consistency of the penalty with the Agency's Penalty Guide;
  8. The notoriety of the offense or its impact upon the reputation of the Agency;
  9. The clarity with which the employee was put on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
  10. The potential for the employee's rehabilitation;
  11. Any mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
  12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

### Section 4. General

- A. Privacy of Corrective Discussion  
Discussions with employees regarding conduct or corrective measures will be conducted in private to avoid embarrassment.
- B. Representational Rights  
Employees have the right to request Union representation for an investigative meeting which the employee reasonably believes could result in discipline against him/her; this right is commonly referred to as a "Weingarten Right." If the employee requests Union representation and a representative is not immediately available, the Agency will:
  - 1) cancel the meeting,
  - 2) delay the meeting for a reasonable period of time until representation can be secured, or
  - 3) continue the meeting but assure the employee in writing that discipline will not be taken based upon what is said at the meeting.
- C. Documentation
  1. When a disciplinary action is initiated (*i.e.*, a warning notice, reprimand or proposal notice is issued) the employee will be given the opportunity to review all the evidence relied upon by the Agency which forms a basis for the reasons and specifications of the action. If the action is based on an investigative report, those portions of the report that relate to the specifications will be made available to the employee. The information that will be made available to the employee will comply with Privacy Act and 5 U.S.C. 7114.
  2. Upon request, the employee will be given a copy of the evidence referenced in C1, above, if provided electronically. Two copies will be furnished if hard copies are given.
  3. The text of the final decision will contain a statement of the employee's representational and [grievance \(including the phone number of the Local Union office\)](#) and/or MSPB rights, if applicable. [The Union will furnish the phone numbers](#)

for each region.

D. Expectation of Timeliness

1. Disciplinary action should be timely. Timely does not mean that disciplinary action should be taken in haste.
2. The Parties agree that a timely request for a reasonable extension of the time limits in this Article will normally be granted. The Parties agree that a “timely request” for an extension means the request, including appropriate justification, is submitted in writing to the appropriate Management official before the deadline expires.

Criminal Charges

The Agency may postpone initiating disciplinary action for offenses related to pending criminal charges. In such cases the time limits in D, above, will begin when the Agency is informed of the final resolution of the criminal matter.

**Section 5. Letters of Instruction/Counselling**

A letter of instruction/counselling is an informal notification from the Agency to an employee that certain actions are inappropriate and advising that if such actions occur in the future disciplinary action may result. Letters of instruction/counselling are not placed in an employee's Official Personnel Folder. Meetings in which employees are initially in an instructional or counselling session regarding their conduct may become an investigatory meeting, whereby the employee has a right to a Union representative if the Agency official begins an examination and the employee has a reasonable belief providing information could lead to discipline.

**Section 6. Procedures - Warning Notices and Reprimands**

Warning Notices

A warning notice is a letter of reprove for an infraction (ordinarily a first offense not too serious in nature). A copy will be placed in the employee's Official Personnel Folder for a period of one (1) year. It may be withdrawn earlier upon request of the employee, at the Agency's discretion.

A. Official Reprimands

A reprimand is a formal notice of censure for a serious incident of misconduct, or repetition of an infraction for which the employee has been previously warned. A copy will be placed in the employee's Official Personnel Folder for a period up to three (3) years. It may be withdrawn earlier, upon request by the employee and at the Agency's discretion.

B. Taking Corrective Action

The Agency is normally responsible for investigating possible misconduct and initiating disciplinary action. Except where a formal record sufficient to take discipline already exists, such as a report of investigation conducted by the Office of Inspector General or a court record, the Agency should follow these procedures:

- Interview the employee who has allegedly committed an offense.
  - Interview witnesses and any others who can provide pertinent information.
  - Try to reconcile any conflicting statements or other evidence. Re-interview the parties concerned, if appropriate.
1. Where the Agency requests in writing using a document other than GSA Form 225, the Agency will inform the employee in writing that “this is part of an inquiry into the

facts that may lead to corrective action.”

2. Before issuing a warning notice or reprimand, the Agency must discuss the incidents giving rise to the discipline with the employee or permit the employee to review and comment on a GSA Form 225, Record of Infraction, or other written report or description of the incidents. A 225 or other written report must be prepared when the Agency is recommending action to a higher level. Employees will normally be given no more than five (5) working days to review and comment on the report. A reasonable amount of official time will be allowed to prepare a response to the report. Employees will have the opportunity to consult a union representative when drafting a response to a 225 form, or the written report.
3. A copy of all statements, letters and/or investigative reports, if any, upon which the Form 225 or other written report is based will be included with the written report for the employee's review.
4. The Agency will not select the specific disciplinary action to impose or recommend until after discussing the incidents with the employee or reviewing the employee's response to the written report as appropriate.
5. Upon request, the Agency will discuss the basis for the final decision with the employee and/or the employee's Union representative. If a warning notice or reprimand is issued, the employee will be informed of the right to grieve the action under Article 7.
6. The employee will be given a copy of any other written document(s) not previously provided which was/were relied upon in issuing the warning notice or reprimand.
7. If the Agency determines that no disciplinary or corrective action is required after following the steps in this Section, the employee will be so informed.
8. If the Agency proposes to eliminate all use of Form 225, it will provide notice and an opportunity to bargain over such proposal to the Union.

### **Section 7. Procedures - Suspension, 14 Days or Less**

#### **A. Proposal Letter**

When the Agency proposes to take a disciplinary action consisting of a suspension of fourteen (14) days or less, the employee will be issued a proposal letter. The letter will include at least fifteen (15) calendar days' advance notice commencing on the date of the employee's receipt of the proposal letter. No decision on the proposed penalty will be effected prior to the expiration of the fifteen (15) day advance notice. The proposal letter will also include specific reasons for the issuance of the letter and contain reply rights as specified in this section.

#### **B. Employee's Response**

1. Upon receipt of the proposal letter, the employee will have not less than fifteen (15) calendar days to answer orally, in writing, or both and to furnish affidavits and other documentary evidence in support of the response. The time limit for response will be specified in the proposal notice.
2. The employee has the right to be represented by a representative of his or her choice during this procedure. In limited situations, it is recognized that Agency ethics officials may identify a conflict of interest and disallow a representative. The reasons for any such determination must be put in writing.
3. When an employee chooses to make an oral reply, the reply will be heard by the

deciding official or designee (The Parties are including “or designee” to address the situation where the deciding official named in the proposal letter is not available. The Parties agree the person who hears the oral reply should make the decision). The employee will be provided with a copy of the Agency summary.

C. Agency Decision

1. In arriving at his/her written decision, the deciding official will consider only the reasons specified in the notice of proposed action and will consider any reply of the employee or his/her representative.
2. The deciding official shall issue a written decision, including the reason(s) therefore, at the earliest possible date following receipt of the employee's response or after the response period if there is no employee response. The decision will be issued within fifteen (15) calendar days following the response period unless the employee's response raises issues that require further investigation or may impact the decision.

**Section 8. Procedures - Suspensions of More Than 14 Days, Reduction In-Grade or Pay and Removals**

A. When the Agency proposes to suspend for more than fourteen (14) days, reduce in grade or pay or remove an employee, the employee is entitled to:

1. **At least thirty (30) calendar days' advance written notice stating** the specific reasons for the proposed action and informing the employee of his/her right to review the material on which the proposal is based and which is relied on to support the reasons in the notice of proposal.
  2. Fifteen (15) calendar days to answer orally or in writing and/or both. (Upon request, the employee will be provided with a reasonable amount of official time to review the material relied upon to support the proposal notice, to prepare an answer and to secure affidavits or other documentary evidence in support of an answer.)
  3. The employee has the right to be represented by a representative of his or her choice during this procedure. In limited situations, it is recognized that Agency ethics officials may identify a conflict of interest and disallow a representative. The reasons for any such determination must be put in writing.
  4. The rights of the Union under this Agreement will not be construed to preclude an employee from being represented by an attorney or other representative; however, if the employee elects the appellate procedures established by law, the employee will be responsible for arrangements and costs associated with such an appeal.
  5. A written decision and the specific reasons therefore at the earliest possible date following the employee's response. The decision will inform the employee of his/her appeal rights.
- B. When an employee chooses to make an oral reply, the reply will be heard by the deciding official or designee (The Parties are including “or designee” to address the situation where the deciding official named in the proposal letter is not available. The Parties agree the person who hears the oral reply should make the decision).
- C. The final decision in any action covered by this section must be made by the deciding official or designee. The final decision letter will contain the specific reasons for the decision and will be issued at the earliest possible date after receipt of the employee's

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oral reply and/or written reply or after the date that such reply would have been due.

D. The Agency will prepare a summary of any oral reply. The employee will be provided a copy of the Agency summary.

In arriving at his/her written decision, the deciding official will consider only the reasons specified in the notice of proposed action and will consider any reply of the employee or his/her representative. The notice of final decision including the effective date of the action will be issued to the employee at or before the time the action will be effective.

### **Section 9. Appeal of Disciplinary Action**

A. Written warnings, reprimands or suspensions for fourteen (14) days or less are grievable under Article 7 of this Agreement.

B. Suspensions of more than fourteen (14) days, reductions in grade or pay, and removals may be appealed within thirty (30) calendar days to the Merit Systems Protection Board or may be grieved under Article 7 of this Agreement.

### **Section 10. Harmful Error**

In accordance with 5 U.S.C. 7701(c)(2), an otherwise valid disciplinary action may only be overturned for procedural error if the employee shows that the error caused substantial harm or prejudice to his/her rights such that if the error had not been made, the Agency might have reached a different conclusion on the appropriate discipline to impose.

### **Section 11. Union Copy of Documents**

An employee who receives one of the following documents from the Agency will be furnished one additional copy of the document which states at the top of the first page in capital letters "UNION COPY,"

1. Instruction or warning;
2. Reprimand;
3. Proposed disciplinary action; and
4. Decision to take disciplinary action.

### **Section 12. Off-duty Misconduct**

Disciplinary action, if taken, must be based on activity which, if verified, would have some nexus (i.e., some relationship) to the employee's position. The Parties agree that the conduct of employees while off duty shall not result in disciplinary action except when there is a nexus between the conduct and the employee's official position.

### **Statements of Intent for Article 30**

A. (Section 4(D)(2)) Language placed in Section 4(D)(2)

B. (Sections 7(B)(3) & 8(B)) Language placed in Section 7(B)(3) & 8(B)

## **ARTICLE 2 – MANAGEMENT RIGHTS**

- A.** Subject to subsection (b) of this section, nothing in this Agreement shall affect the authority of any Management official.
- a. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
  - b. In accordance with applicable laws -
    - i. to hire, assign, direct, layoff and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
    - ii. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
    - iii. with respect to filling positions, to make selections for appointments from
      1. among properly ranked and certified candidates for promotion; or
      2. any other appropriate source; and to take whatever action may be necessary to carry out the Agency mission during emergencies.
- B.** Nothing in this Agreement shall preclude the Agency and the Union from negotiating-
- a. at the election of the Agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work
  - b. procedures which Management officials of the Agency will observe in exercising any authority under law or this Agreement; or
  - c. appropriate arrangements for employees adversely affected by the exercise of any authority under law or this Agreement by such Management officials.

### **Statement of Intent for Article 2**

The Parties are explicitly incorporating the language of the Statute into the Agreement regarding Management Rights.

## ARTICLE 31 – EMPLOYEE SPACE

### Section 1. Space Redesigns, Renovations, and Employee Relocations

#### A. Space Change Needs

The Parties agree that the physical movement of individuals or organizational groups of bargaining unit employees may be necessary due to redesign, renovation or relocation of offices, or to promote the efficiency of operations and/or the efficient use of allocated office space.

#### B. Pre-Decisional Involvement

The Parties will engage in Pre-Decisional involvement (PDI) whenever practicable. When the Agency is considering PDI for a decision to move, co-locate, open a new office, expand, or reduce any office space, the Labor Relations Specialist (LRS) will notify the Union before the Agency engages in the formal assessment process which is intended to result in a final decision. The Parties agree that the goal is to have a collaborative process and attempt to reach agreement before the Agency's requirements are finalized and submitted.

#### C. Information-Sharing

1. The Union will be afforded an opportunity to designate one or more representative(s) to participate in walk-throughs of space. The representative(s) may ask questions and provide input.
2. As applicable and available, the Union will be furnished the following:
  - a. Copies of floor plans showing current and proposed post-move locations of bargaining unit employees;
  - b. Names, titles, series, grades, and service computation dates for all bargaining unit employees to be moved;
  - c. Any known environmental problems;
  - d. The projected date or series/range of dates of the move; and
  - e. Any work-related groupings or collaborative arrangements proposed to enhance the performance or efficiency of work processes.
3. The Union will have the opportunity to meet with groups of affected employees to obtain feedback on proposed space changes.

#### D. Reaching Resolution

The Parties will meet, as appropriate, to provide the Union an opportunity to provide timely input into the space change. If a resolution is reached on issues involved in the space change, the Parties will sign an agreement stating the provisions agreed upon. Within five (5) days, or as otherwise agreed, after the Parties acknowledge that full agreement has not been reached, the LRS or designee will provide formal notice to the Union of its right to request timely bargaining on those issues appropriate for bargaining, in accordance with Article 9.

## **E. Bargaining of Union Proposals**

Bargaining will be in accordance with Article 9 of this Agreement.

### **Section 2. Space Assignment.**

The Parties will discuss and/or negotiate space assignment through the procedures set forth in Section 1. The Parties recognize that space assignment will depend upon various criteria including teams, organizational components, projects, functional responsibilities, work schedules, location of supervisors, amount of time an employee teleworks and/or security needs and any discussions or agreements should be based on such considerations

### **Section 3. Non-Smoking/Vaping**

Smoking is prohibited in or near GSA-occupied space and in Government-owned or leased vehicles assigned to GSA in conformance with the 2010 NFFE-GSA “No-Smoking” MOU and Government-wide policies. Any changes to current, officially-designated outdoor smoking areas will not be implemented without providing notice and an opportunity to bargain to the Union. Similarly, vaping is prohibited in areas and vehicles where smoking is prohibited.

### **Section 4. Conference and Shared-Use Space**

The reliability and functionality of the Agency’s reservation systems, where in use, and availability of suitable conference rooms or other shared workspace may be addressed in the Parties’ Labor-Management meetings, upon request of either Party.

### **Statements of Intent for Article 31**

- A. The details of the meeting time and place will need to be worked out between Management and the Union. (Section 1(C)(3))
- B. For purposes of 1D, the Parties recognize that meetings on different subjects may occur at the time the information is known.
- C. For purposes of Section 3, “near” means courtyards, within 25 feet of doorways and building air intake ducts (per MOU with NFFE). “Officially-designated” means the current presence of GSA signage or a written agreement designating that space for smoking.

## ARTICLE 7 - GRIEVANCE PROCEDURES

### Section 1. Purpose and General Principles

- A. The purpose of this Article is to provide a mutually-acceptable method for prompt and equitable resolution of grievances for bargaining unit employees and the Parties.
- B. The Parties fully support the informal resolution of grievances. The Parties agree that most grievances arise from misunderstandings which can and should be settled promptly and satisfactorily on an informal basis at the immediate supervisory level.
- C. The Parties will make every effort to ensure that grievances and complaints are resolved in an orderly, prompt, and equitable manner that shall maintain the self-respect of the employee and be consistent with the principles of good management and the public interest.
- D. The Parties agree that the initiation of a grievance in good faith by an employee should not cast any reflection on his/her standing with his/her supervisor or his/her loyalty to the organization. The Parties' representatives shall not discriminate against employees for exercising their right to file a grievance pursuant to this Article. The grievance should not be considered a negative reflection on the Supervisor.
- E. It is in the best interest of resolution of disputes that the Agency conduct such fact-finding as deemed appropriate by the Agency and engage in good faith consideration of the issues and information presented in the grievance procedure.
- F. The Parties agree that the time frames in this Article will be strictly adhered to, absent a mutually agreed upon extension.

### Section 2. Definition

- A. "Grievance" means any complaint:
  - 1. By any bargaining unit employee concerning any matter relating to the employment of the employee, or
  - 2. By the Union concerning any matter relating to the employment of any ~~bargaining unit employee~~, or
  - 3. By any ~~bargaining unit employee~~, the Union, or by the Agency concerning--
    - a. The effect or interpretation, or a claim of breach, of Agreement; or
    - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;
- B. "Grievant" means the ~~person, group or institution on~~ whose behalf the complaint is filed.
- C. "Abeyance" is the period of time the clock is stopped from running on a time frame under this Article.
- D. "Toll" means the act of suspending the time clock from running.

### Section 3. Available Procedure

This negotiated grievance procedure will be the only procedure available to bargaining unit employees or the Parties for the processing and disposition of grievances as defined in Section 2 of this Article, ~~an employees~~ may choose a statutory appeal process or the negotiated grievance procedure but not both concerning matters for which a statutory choice of procedure exists. The Parties agree that a choice on any given matter is made when the grievance or appeal is formally filed in writing with the

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appropriate Management official for grievances and the appropriate authority for statutory appeals.

### **Section 4. Representation**

A grieving employee will have the right to be represented by a Union official at each step of the grievance procedure or to represent himself/herself. In the event the employee chooses not to have a Union official as his/her representative, a Union official will have the right to attend settlement discussions.

For an individual employee-filed grievance the Agency will not recognize any representative other than the employee himself/herself, or a representative designated by the Union. ~~The role of the employee-requested representative, if approved and designated by the Union, will be determined by the Union. The Union is entitled to have one Union representative at the meeting on official time.~~

### **Section 5. Matters Excluded from the Grievance Procedure**

The following matters are excluded from the Grievance Procedure:

1. An alleged violation relating to prohibited political activities (Subchapter 3 of Chapter 73 of Title 5);
2. Retirement, life insurance, health insurance;
3. A suspension or removal for national security purposes (5 U.S.C. 7532);
4. An examination, certification, or appointment;
5. The classification of any position which does not result in the reduction in grade or pay of an employee;
6. Termination of probationary employees, absent a statutory exception;
7. Performance standards (but not the application of the standards);
8. Non-selection for a position (but not procedures used or qualification determinations);
9. A complaint under 29 CFR 1614.102 of the government-wide regulations on Equal Employment Opportunity or a complaint of discrimination under 5 U.S.C. 2302 (b)(1)(A), (B), (C), and (D) that has been filed under the statutory EEO complaint procedure; this exclusion does not apply to allegations of discrimination as an affirmative defense in a grievance of a suspension, removal, demotion, or denial of within grade increase;
10. Any issue otherwise excluded by law.

### ~~Section 5.~~ **Section 6. Pre-filing Investigation**

The Parties recognize the Union's right to investigate a situation giving rise to a grievance or proposed disciplinary action. Witnesses will be released when requested by the Union unless work conditions require their presence on the job. When release cannot be accomplished immediately, the witnesses will be released normally within one (1) work day.

### ~~Section 6.~~ **Section 7. Requirements for All Grievances**

All formal grievances filed under this Agreement must be in writing and must include the following:

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- A. A brief written statement of the issue or occurrence which gives rise to the grievance;
- B. If appropriate, the provision(s) of law, regulation, or this Agreement alleged to have been misinterpreted, misapplied, or violated;
- C. The remedy sought;
- D. Whether a meeting is requested;
- E. If the employee is represented by the Union, the name of the Union Representative;
- F. Any **and all** evidence or information relevant to the issue if known and available to the Union.

### ~~Section 8.~~ **Section 9. Informal Resolution of Grievances**

The Parties may agree to hold the filing of the formal grievance in abeyance to proceed with an informal process which includes a meeting with the aggrieved Party and the first level supervisor to resolve the complaint at the lowest level. If the complaint cannot be resolved in the informal process at the lowest level then the grievant may proceed to the formal process.

### ~~Section 9.~~ **Section 10 Formal Grievance Procedure**

#### A. STEP 1

1. Formal Grievance –Grievances ~~other than expedited grievances~~ must be filed within thirty (30) days of the incident giving rise to the grievance, or within thirty (30) days after the ~~aggrieved employee~~ becomes aware of or should have reasonably become aware of the matter out of which the grievance arises. ~~or is a continuing violation.~~  
Electronic Filing: The ~~preferred~~ method for filing grievances is electronic ~~and ally.~~ Electronic filing must be sent by 11:59pm in the time zone of the sender. All grievances ~~filed electronically~~ against the Agency ~~will~~ be filed at the email address ~~XXXXXXXXXXXX~~ nffe-grievances@gsa.gov. Grievances filed ~~electronically~~ against the Union will be filed with the GSA Council President or designee. The subject line of the grievance will state either “NFFE Grievance” or “GSA Grievance”. Supporting documentation, as defined in Section ~~67. if not attached to the electronic submission, will be filed with the NDLR/RLRO or designee within two (2) working days of filing the grievance.~~
  - a. ~~In-person Filing:~~ ~~In-person filing of a Local, regional, individual or group grievance against the Agency must be filed with the RLRO, designee or supervisor within the chain of command of the grievant. In-person filing of a National level and Institutional grievance against the Agency will be filed with the NDLR or designee. In-person filing of a Local or regional level grievance against the Union must be filed with the RVP or designee. In-person filing of a national level or institutional level grievance against the Union must be filed with the GSA Council President or designee. All grievances filed in-person must be received by 5:00pm at the location where filed.~~
2. Meeting - If a meeting is requested by the grievant/Union/~~Agency~~ or the deciding official, it will be held within fifteen (15) days of the submission of the written grievance, unless mutually agreed otherwise. The ~~Grievance~~ Deciding Official for

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Step 1 would ordinarily be either the second line or third line supervisor. ~~Both Parties agree that having face-to-face meetings is the preferred method for resolving grievances. However there may be circumstances where participants are unable to meet face-to-face such as not being geographically co-located. In these circumstances some or all participants may participate in the meeting remotely through video, electronic or telephonic means.~~

3. Agency Response - The **Grievance** Deciding Official, will respond in writing within ~~f~~Fifteen (15) days of either the meeting or receipt of the grievance if no meeting is requested. The response will contain the name of the Step 2 **Grievance** Deciding Official, if full relief is not granted.

### B. STEP 2

1. Written Appeal of Step 1 Decision - An appeal of a decision in Step 1 must be submitted in writing to the Step 2 **Grievance** Deciding Official within fifteen (15) days after the Step 1 response is issued.
2. Meeting - If a meeting is requested, it must be held within ~~f~~Fifteen (15) days after receipt of the appeal at Step 2, unless mutually agreed otherwise. ~~The Deciding Official in Step 2 will be the Regional Commissioner, Deputy Regional Commissioner, or designee (at least at level GS-15).~~
3. Agency Response - The **Grievance** Deciding Official responding to the **Step 2** grievance will reply in writing within ~~f~~Fifteen (15) days of either the meeting or receipt of the grievance if no meeting is requested.

### C. Alternative Dispute Resolution – For ~~non-adverse action~~ grievances the Parties are encouraged to use Alternative Dispute Resolution (ADR) (mediation) at any time during the grievance process.

1. The use of ADR will be by mutual agreement.
2. If agreed to, the Parties will jointly request the services of the Federal Mediation and Conciliation Services (FMCS) or other mutually-agreed mediator.
3. The mediation will be conducted in accordance with the process established by the mediator.
4. If ADR is used, if necessary the time periods will be tolled during the period of the ADR process. After notice from the Mediator that the ADR/Mediation process has ended, the processing of the grievance is no longer tolled and the clock resumes the following work day.
5. ADR will take place within thirty (30) days from the request unless extensions are mutually agreed upon.

### D. Invoking Arbitration - If the remedy requested is not granted in Step 2, the National Council President, Regional Vice President or designee may invoke arbitration for the Union within thirty (30) days of receipt of the decision letter or within thirty (30) days from the end of the Agency's response period.

## ~~Section 10. Mediation~~

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~~A grievant who files a grievance on an adverse action using the process contained in Section 11 has available to them the Mediation process as described in this section. The Parties, with the consent of the grievant, agree to the use of the services of the Federal Mediation and Conciliation Service (FMCS) for adverse action grievances. The process will be used as a non-binding attempt at dispute resolution regarding adverse actions before the invocation of arbitration.~~

- ~~A. Each adverse action grievance will be dealt with on a case-by-case basis.~~
- ~~B. The Party requesting the use of mediation will submit its request to the other Party within ten (10) days after receipt of the Step 2 decision.~~
- ~~C. The Party initiating the request will be responsible for notifying and requesting the services of the FMCS. Any cost associated with this service shall be alternated by the Parties.~~
- ~~D. The Parties agree to cooperate with the efforts of the mediator.~~
- ~~E. Any recommendations of the mediator or any settlement discussions shall not be used as evidence during any official, binding, third-party procedure.~~
- ~~F. The use of the mediation process will serve to toll the time parameters for invoking arbitration until one or both Parties decide the mediation process has not been successful. "Success" is defined by the Parties as reaching an agreement that resolves the dispute.~~
- ~~G. The request for mediation does not prevent the Agency from imposing the adverse action penalty.~~

### ~~Section 11. Expedited Employee Grievance Procedure~~

#### ~~A. Application~~

~~This section applies to grievances over suspensions for over fourteen (14) days, and conduct and performance-based removals.~~

#### ~~B. One-Step Expedited Grievance Procedure~~

- ~~1. Written Grievance – The grievance must be filed with the Management Official identified in the decision letter within fifteen (15) days of receipt of such decision letter. If the employee is raising an affirmative defense to the action being grieved, the grievance should include an explanation of the affirmative defense and the basis for asserting the affirmative defense.~~
- ~~A. Meeting – If a meeting is requested, it must be held within ten (10) days after receipt of the grievance, unless mutually agreed otherwise.~~
- ~~2. Agency Response – The Deciding Official will respond in writing within ten (10) days of receipt of the appeal or within ten (10) days of the date of the meeting, whichever comes later.~~
- ~~3. Invoking Arbitration – If the remedy requested is not granted, the RVP or designee may invoke arbitration within ten (10) days of receipt of the decision or within ten (10) days of the end of the Agency's response period, whichever is later.~~

### ~~Section 12. Institutional Grievances~~

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- ~~A. Written Grievance – The Union or the Agency shall raise the grievance in writing within thirty (30) days of the incident giving rise to the grievance, or within thirty (30) days after the Union or the Agency becomes aware or reasonably should have become aware of the matter out of which the grievance arises. The grievance shall be filed in accordance with Section 9(A)~~
- ~~B. Meeting – If requested by either Party, the grievance may be discussed informally by the NDLR or RLRO (or their designee) and the Union representative within fifteen (15) days of receipt of the grievance.~~
- ~~C. Agency Response – The NDLR/RLRO (or designee) will respond to the grievance in writing within fifteen (15) days of either (1) the meeting or (2) receipt of the grievance, if no meeting is held.~~
- ~~D. Union Response – The NCP/RVP (or designee) will respond to the grievance in writing within fifteen (15) days of either (1) the meeting or (2) receipt of the grievance, if no meeting is held.~~
- ~~E. Invoking Arbitration – If the institutional grievance is not satisfactorily resolved, either Party may invoke arbitration within thirty (30) days of receipt of the decision or within thirty (30) days of the end of the Agency or Union response period, whichever is later. Any matters or issues not contained in the written grievance shall not be raised before the arbitrator.~~
- ~~F. Grievances arising over the interpretation of the language in this Agreement which are not resolved at the Local or regional level must be submitted to the Parties at the National level for resolution within fifteen (15) days of the receipt of the Step 2 Local or regional decision or when the decision was due.~~
- ~~G. Once a grievance has been submitted to the National level under E, above, Parties at the Local or regional level may not proceed to an arbitration hearing until the grievance has been settled or released by the National Parties. The National Parties will settle or release the grievance within thirty (30) days, unless mutually agreed otherwise. Notification procedures for invoking arbitration in accordance with this Article will apply.~~

### **Section 13. Section 11 Miscellaneous**

- A. Any time limits in this Article may be extended on a case-by-case basis by mutual agreement; such extensions shall be confirmed in writing.
- B. Any step in the grievance procedure may be waived by mutual agreement on a case-by-case basis; such waivers shall be confirmed in writing.
- ~~C. The Agency shall provide the Union with a copy of each formal employee grievance filed without Union representation, at each step of the grievance procedure.~~
- ~~D. If the Grievant/Union files a grievance or elevates a grievance that the Agency has determined to be untimely, the Agency will continue to process the grievance in accordance with this Article. If the Agency fails to respond timely at Step 1, the grievant/Union will contact the appropriate LRO to ascertain the identity of the Step 2 Decision Maker. If the Agency fails to respond timely at Step 2, the Union may invoke arbitration.~~

### **Statements of Intent for Article 7**

- ~~A. Notice of Union or Management designee(s) will be given in writing. (Article 7)~~

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- ~~B. Other Government-wide benefits (e.g. long term care, TSP) even though not addressed in the list of exclusions from the Grievance Procedure are considered excluded. (Section 2(B))~~
- ~~C. Group Grievances may be concerning the same or different Supervisors, but must concern the same issue. (Section 2(I))~~
- ~~D. It is the intent of the Parties that the grievances under Section 3 will be filed in accordance with Section 7.~~
- A. The **designated primary** Union representative will be the point of contact for all purposes under the grievance procedure. If the **designated primary** representative on either side changes for any reason, reasonable written notice will be given to the other side. (Section 4)
- ~~B. The secondary representative in the grievance process will be an observer and not an active participant. (Section 4)~~
- ~~C. If the Union Representative is an Agency employee, he/she will be on official time in an employee-filed grievance, performing the function of an observer in a formal discussion. (Section 4)~~
- ~~D. Both Parties will make a good faith effort to share information as it becomes available during the grievance process, and especially before arbitration is invoked. (Section 5)~~
- ~~E. The Parties will come to agreement on the level (Local, regional, or National) of grievances being filed. (Section 7)~~
- ~~F. Remote employees receive no travel or time for in-person submissions. (Section 7(B))~~
- ~~G. Examples of circumstances where remote participation in meetings may be necessary include where the Parties are not geographically co-located or when one or more participants are not physically (medically) able to meet. (Section 9(A)(2))~~
- ~~H. The technical logistics of remote participation is the Agency's responsibility. (Section 9(A)(2))~~
- ~~I. Any recommendations of the mediator or any settlement discussions shall not be used as evidence during any official, binding, third-party procedure. (Section 9(C))~~
- ~~J. Both Parties agree that from the day mediation is invoked the time clock will be tolled until the process is completed. (Section 10)~~
- ~~K. After notice from the Mediator that the ADR/Mediation process has ended, the processing of the grievance is no longer tolled and the clock resumes the following work day. (Section 9(C) and Section 10(F))~~
- ~~L. An "adverse action" refers to suspensions for more than 14 days, involuntary reduction in pay or grade, disciplinary or performance-based removals or furloughs over 30 days. (Section 10)~~

The Union Asserted Standing on the 1992 CBA Article 7 Language

### ARTICLE 7 - GRIEVANCE PROCEDURES

#### Section 1. Purpose

The purpose of this Article is to provide a mutually acceptable method for prompt and equitable resolution of grievances for bargaining unit employees and the Parties. It will

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apply to all matters defined below whether or not specifically addressed in this Agreement.

### **Section 2. Definition**

Grievance means any complaint;

- by any bargaining unit employee concerning any matter relating to the employment of the employee,
- by the Union concerning any matter relating to the employment of any bargaining unit employee, or
- by any bargaining unit employee, the Union, or the Employer concerning
  1. the effect or interpretation, or a claim of breach of this agreement, or
  2. any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

### **Section 3. Policy**

Most grievances arise from misunderstandings which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. The Employer and Union agree that every effort will be made by management officials, the Union, and grievant(s) to settle grievances at the lowest possible level. It is understood by the Employer and the Union that the initiation of a grievance in good faith by an employee should not cast any reflection on his/her standing with his/her supervisor and his/her loyalty to the organization, nor should the grievance be construed as a reflection on the employee's supervisor.

### **Section 4. Exclusions**

Complaints, appeals and grievances on the following matters are excluded from the scope of this procedure:

- A. A violation relating to prohibited political activities;
- B. Retirement, life insurance or health insurance;
- C. A suspension or removal for national security reasons;
- D. Any examination, certification or appointment;
- E. Classification of a position which does not result in reduction in pay or grade for the employee;
- F. Personnel action as the result of a reduction-in-force;

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- G. Separation of a probationary or trial period employee; or
- H. Any other separation action not appealable to MSPB.

### **Section 5. Grievance Requirements**

The Parties agree that all grievances when first presented in writing must set forth the following:

- A. The issue or occurrence giving rise to the grievance;
- B. Whether a meeting is requested;
- C. The provision(s) of law, regulation, or this Agreement which allegedly has been misinterpreted, misapplied or violated;
- D. All relevant evidence and information; and
- E. The relief sought, which must be personal to the grievant.

### **Section 6. Available Procedure**

This will be the only procedure available to bargaining unit employees for the processing and disposition of grievances as defined in Section 2, above, except when the employee has a statutory right of choice between this procedure or a statutory appeal procedure, i.e., adverse actions resulting from unacceptable performance under 5 U.S.C. 4303 or misconduct under 5 U.S.C. 7512 or prohibited personnel practice under 5 U.S.C. 2302(b)(1). In those matters where the statutory choice exists, the employee exercises that choice for the grievance procedure when the grievance is submitted in writing to the designated management official or for the applicable statutory appeal procedure when submitted in writing to the appropriate official.

### **Section 7. Representation**

A. Upon request by an employee(s), or at its own initiative, the Union may conduct informal investigations necessary to determine whether a grievance should be filed. All Parties will comply with the Privacy Act and other applicable laws and regulations.

B. When an employee wishes the Union to represent him/her in a grievance, the employee will submit a signed statement to that effect to the Union. The Union will forward that statement, along with the name of the designated Union representative for the case, to the appropriate management official. Thereafter, all official communication will be between the Employer and the designated Union representative.

### **Section 8. Time Limits**

Time limits in this Article may be extended by mutual consent of the Parties. Reasonable requests will normally be granted. The Parties agree to respond to the grievance within the time frame allowed. However, if the Parties are unable to do so, the reason for the delay will be stated and an extension of the time limits may be agreed to.

## 20079 Union proposal Article 7 – Grievance procedures

Failure by the grievant to meet time limits, or to request and receive an extension of time, shall automatically cancel the grievance. Failure of the responding official to meet time limits, or to request and receive an extension of time, shall entitle the grievant to process the grievance to the next step.

### **Section 9. Employee Procedure**

Many problems can be solved informally, that is without resorting to the formal grievance procedure. Employees and Union representatives are encouraged to discuss the concerns with the immediate supervisor prior to submitting a formal grievance.

#### A. Step 1.

1. All employee grievances, except as provided in Section 9A2, below, and Article 14 Section 12A, must be raised with the immediate supervisor. The employee must raise a grievance with the immediate supervisor in writing within thirty (30) days after the incident giving rise to the grievance or within thirty (30) days after he or she should have become reasonably aware of the incident.

2. A grievance over a disciplinary action must be raised with the management official rendering the decision imposing discipline within thirty (30) days following delivery of the decision. If such grievance is filed at a level higher than the immediate supervisor, it will be considered to be a Step 2 grievance. If such grievance is filed with the Regional Administrator or a Head of Central Office Service, it will be considered a Step 3 grievance.

3. If the immediate supervisor does not have authority to resolve the matter, the supervisor will refer the grievance to the appropriate higher level management official.

4. The supervisor or higher level management official will respond in writing within fifteen (15) days after the employee raises the grievance.

#### B. Step 2.

1. An appeal of the decision at step 1 must be presented in writing to the next higher level supervisor within fifteen (15) days after receipt of the step 1 response or within fifteen (15) days after the end of the step 1 official's response period.

2. In conjunction with submitting the formal grievance, the employee can request a meeting to discuss the grievance. The Step 2 official or designee shall arrange a meeting within fifteen (15) days of receipt of the grievance. If a meeting is held, the official will respond within fifteen (15) days after the meeting. If a meeting has not been requested, the official will respond within fifteen (15) days after receipt of the grievance. The Step 2 official or designee will issue a decision in writing, either granting, modifying, or denying the relief requested. The decision will notify the employee of the name and location of the Step 3 official with whom to proceed if the requested relief is not granted. A copy of the grievance may be sent to the Head of the Central Office Service or Regional Administrator if a designee is named.

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### C. Step 3

1. An appeal of a decision in Step 2 must be submitted in writing to the Head of the Central Office Service, or to the Regional Administrator or their designees as identified in the Step 2 decision within fifteen (15) days of receipt of the Step 2 response or within fifteen (15) days of the end of the supervisor's response period.

2. If a meeting is requested it shall be held within fifteen (15) days of receipt of the grievance at Step 3.

3. If a meeting is held, the official will respond within fifteen (15) days after the meeting. If a meeting has not been requested, the official will respond within fifteen (15) days after receipt of the grievance. If the relief requested is not granted, arbitration may be invoked in accordance with Article 8.

D. The official hearing a Step 2 or Step 3 grievance will not have issued a decision at an earlier step.

### **Section 10. Group Grievances**

A. A group grievance is a grievance filed by the Union on behalf of a large number of bargaining unit employees, under different immediate supervisors, involving the same facts and the same issue(s). Grievances on behalf of several bargaining unit employees all under the same supervisor should be filed with the appropriate official in accordance with Section 9.

B. A group grievance involving more than one supervisor will be filed by the Union at step 2 or step 3 as appropriate in accordance with Section 9. Step 3 is appropriate if there is more than one second level supervisor involved.

### **Section 11. Institutional Grievances**

A. An institutional grievance is a grievance filed by the Union or the Employer on its own behalf in its institutional capacity at the regional or local level.

### B. Procedure

1. The Union or the Employer shall raise the grievance in writing within thirty (30) days of the incident giving rise to the grievance, or within thirty (30) days after the grieving party becomes aware or should have reasonably become aware of the matter out of which the grievance arises. The grievance shall be filed with the appropriate Central Office or Regional Labor Relations Officer (RLRO), or Regional Vice President (RVP).

2. Any matters or issues not contained in the written grievance will not be considered by the arbitrator. If requested, the issue will be discussed informally by the Parties within fifteen (15) days of receipt of the grievance. Such discussions may be held by telephone if the Parties are at different geographical locations.

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3. A decision will be issued within thirty (30) days of receipt of the grievance or the date of the discussion, whichever is later.

4. If the grievance is not resolved, arbitration may be invoked in accordance with the provisions of the Arbitration Article.

### **Section 12. National Level Grievances**

A. Issues of national scope must be raised with the Employer's representative at the National level by the Council President or his or her designee, or with the Council President by the Employer's representative at the National level. The grievance must be presented within thirty (30) days of the incident giving rise to the grievance or within thirty (30) days after the grieving party becomes aware or should have reasonably become aware of the matter out of which the grievance arises.

B. Any matters or issues not contained in the written grievance will not be considered by the arbitrator.

C. The Parties will meet or discuss the issue by telephone within thirty (30) days after receipt of the grievance. The responding Party will reply in writing within thirty (30) days of the meeting or discussion. In the event that satisfactory resolution is not achieved, the grieving Party has the right to refer the matter to arbitration in accordance with the provisions of the Arbitration Article.

### **Section 13. Grievances over Interpretation of the Agreement**

A. Grievances arising over the interpretation of the language in this Agreement which are not resolved at the local or regional level must be submitted to the Parties at the National level for resolution.

B. Once a grievance has been submitted to the National level under A, above, Parties at the local or regional level may not proceed to an arbitration hearing until the grievance has been settled or released by the National Parties. The National Parties will settle or release the grievance within 30 days, unless mutually agreed otherwise. Notification procedures for invoking arbitration in accordance with Article 8, Section 2 of this Agreement will continue to apply.

## **ARTICLE 38 – DURATION AND TERMINATION**

### **Section 1. Duration and Renegotiation of Agreement**

- A. This Agreement shall take effect upon completion of official Agency Head Review or upon the 31<sup>st</sup> day, whichever is earlier, (pursuant to Section 7114(c) of the Statute) after final execution and shall remain in full force and effect for a period of 3 years after its effective date. It shall be automatically renewed for annual periods thereafter unless either Party gives the other notice of its intention to renegotiate this Agreement no more than 105 nor less than 60 days prior to the termination date. Notice and all other arrangements will be made between the National Director of Labor Relations or designee for the Agency and the NFFE National President or designee.
- B. In the event that notice is given for the renegotiation of the Agreement, the Party which first provides notice to renegotiate the agreement will provide written opening ground rule proposals no later than twenty-one (21) days after providing notice. The other Party will submit written counter-proposals for ground rules within fifteen (15) days of receipt. Failure to meet the timeframes by the moving Party will automatically void the renegotiation notice unless an extension has been mutually agreed upon. Ground rules will be fully-negotiable for term bargaining except as otherwise provided in this Agreement. The Parties will commence negotiating ground rules within 10 days of the receipt of counter-proposals. If the Parties are in different geographic locations or the issue of the location of the negotiation of ground rules is in question, telephonic or video teleconference negotiations will be used unless mutually agreed otherwise. Time frames may be extended upon mutual agreement. Each Party determines how its participants will attend the meeting - either in-person or remotely.

### **Section 2. Access to and Copies of the Agreement**

The Parties agree to reduce costs and encourage the use of the web-based GSA-NFFE National Agreement available on the GSA internal webpage (intranet). The Agency will print 3500 copies for bargaining unit use, which includes 300 copies to be provided to NFFE. Copies to current bargaining unit employees will be distributed according to arrangements made jointly, at the regional/central office level, with the Agency taking the lead. The Agency will not be responsible to pay for or to print copies beyond the 3500 referenced above during the life of this Agreement. Each Party will be solely responsible for the expenses associated with making any additional copies.

### **Section 3. Rescission of Executive Orders**

In the event of the rescission of Executive Orders 13522, 13836, 13837 or 13839 either party may request to renegotiate this agreement within a reasonable time. Upon rescission of the Orders, the union's rights as contained in the predecessor 1992 agreement and related MOUs will be immediately restored status ante to October 2, 2019.

## ARTICLE 6 – OFFICIAL TIME

### Section 1. Recognition

The Agency agrees to recognize NFFE National Headquarters Representatives, NFFE GSA Council Representatives, and other designated NFFE Union Representatives. The Agency will allow representatives of NFFE Headquarters reasonable access to its facilities for the purpose of carrying out the functions prescribed by this Agreement and the intent of the Statute. NFFE Headquarters representatives must obtain prior approval from the Agency before entering its work areas and will abide by applicable rules and regulations.

### ~~Section 2. Designation of Representatives~~

- A. There will be up to four (4) National officers/representatives. One of the four (4) national representatives will be designated by NFFE as the permanent, primary Point of Contact for the NFFE consolidated bargaining units and the Union will provide at least 14 working days' notice to the Agency of any change or substitution to such primary Point of Contact, except in cases of emergency. Failure to provide such advance notice will excuse the Agency from providing notice to the proper NFFE representative, until such time as the National Director of Labor Relations has had actual notice of the change/substitution for 14 work days. Advance notice of 14 working days will be provided for changes or substitutions of any of the other three (3) national representatives.
- ~~B.~~ Should the number of NFFE Representatives from one service, division, or work unit become an Agency concern for workload or coverage issues, the Parties will meet to discuss the problem. If the Parties cannot resolve the issue, either Party may invite FMCS mediation or engage in another form of ADR as mutually agreed.

### Section 2. Designation of Representatives

- A. The Parties have agreed that thirteen (13) FTEs (total) is the appropriate amount of official time for those representational duties established under this Agreement as reasonable, necessary, and in the public interest. This does not include official time established or requested under statutory authorization (such as to participate in procedures before the FLRA or EEOC, in which cases official time will be determined by those enforcement agencies). The Union will provide the Agency with a list of all designated union representatives within 30 days of the effective date of this Agreement. The Union will provide an updated list when there is a change to a designated union representative. Each list will include the name, union position, GSA organization, duty location, email address and telephone number(s) of each designated union representative. Union representative lists must be emailed to [XXXXXX@gsa.gov](mailto:XXXXXX@gsa.gov).
- B. Additional official time may be authorized for Labor-Management meetings or other representational activities initiated at the national, regional, or local levels as determined by Management, except that only the National Labor Relations Director or designee may authorize recurring or regular official time in excess of the 13 FTEs.

## Union Proposals ARTICLE 6 – OFFICIAL TIME

- C. From the total of 13 FTEs, there will be up to four (4) National officers/representatives. One of the four (4) national representatives will be designated by NFFE as the permanent, primary Point of Contact for the NFFE consolidated bargaining units and the Union will provide at least 14 working days' notice to the Agency of any change or substitution to such primary Point of Contact, except in cases of emergency. Failure to provide such advance notice will excuse the Agency from providing notice to the proper NFFE representative, until such time as the National Director of Labor Relations has had actual notice of the change/substitution for 14 work days. Advance notice of 14 working days will be provided for changes or substitutions of any of the other three (3) national representatives.
- D. Each of the four National representatives will receive a block of actual 100% official time.
- E. Should the number of NFFE Representatives from one service, division, or work unit become an Agency concern for workload or coverage issues, the Parties will meet to discuss the problem. If the Parties cannot resolve the issue, either Party may invite FMCS mediation or engage in another form of ADR as mutually agreed.
- F. The allocations of the 13 actual FTEs may be changed with at least 90 days' written advance notice to the National Labor Relations Director or designee. Changes or substitutions of regional, area, office representatives to fill the allocations will be effective after 21 work days' notice to the Agency's National Director of Labor Relations or designee.
- G. An individual appointed to more than one position identified in this Article will be entitled only to use the amount of official time allotted to the higher position held.

### Section 3. Substitute Representatives

The use of all official time shall be for legitimate representational duties. The NFFE Point of Contact may assign substitute representatives to use (backfill) the official time percentage of representatives for whom they are acting. The National Council President or designee will comply with the notification requirements listed in this Article, normally two workdays in advance, and also designate the period for this substitution.

### Section 4. Use of Official Time

- A. An employee must otherwise be in regular duty status in order to receive official time. (e.g., not for overtime, non-travel compensatory time, leave time)
- B. Subject to the provisions of this Article, contractual official time may be granted for performance of the following representational activities:
  1. Representing employees and/or the Union in a grievance or arbitration filed under Article 7 & 8 of this Agreement;
  2. Representing the Union at Union-initiated meetings with Management;
  3. Representing the Union at Management-initiated meetings;
  4. Receiving employee complaints and grievances relating to working conditions;
  5. Receiving and reviewing Management proposals for changes in conditions of employment of bargaining unit employees, when the representative has been

## Union Proposals ARTICLE 6 – OFFICIAL TIME

- identified to the national Director of Labor Relations or regional LRO as the Union representative responsible for such review;
6. Official time may be used for Union-sponsored labor relations or other training which is of mutual benefit to the Parties and has been approved in advance by the Agency. The Union will make application for this use through the National Director of Labor Relations or designee;
  7. Representing the bargaining unit at formal discussions with Management;
  8. Representing an employee during any examination of the employee per 5 USC 7114(a)(2)(B) (Weingarten Meeting);
  9. Preparations of proposals for negotiations;
  10. Presentation of training on the National Agreement;
  11. Contacting members of Congress, their staff, or committees for representational matters including conditions of employment and pending legislation. Union representatives attending the NFFE legislative lobby week will receive official time for the time spent presenting their views to Congress and the Executive Branch on conditions of employment;
  12. Travel to perform representational duties; or
  13. Mediation sessions, directly associated with resolutions of grievances or complaints.
- C. Union representatives who participate in processes before the FLRA will be granted official time as determined by the FLRA. The official time authorized by the FLRA is not subject to the limitations contained in **Section 2** of this article.
- D. Union representatives who represent bargaining unit employees before the MSPB or EEOC as their personal representative are not subject to the limitations contained in **Section 2** of this Article; they will receive official time as granted by MSPB and/or EEOC. Time for personal representatives in the Agency informal EEO process is subject to approval by OCR and not subject to the limitations contained in **Section 2** of this Article.
- E. Representatives shall be granted official time not subject to the limitations in **Section 2** to accompany inspectors on safety and health inspections conducted in accordance with Article 13 of this Agreement.
- F. Union representatives involved in negotiations shall receive statutory official time for time spent in negotiations, including mediation and attendance at impasse proceedings. Union negotiators receiving statutory official time will be equal in number to Management representatives. This official time is not subject to the limitations established in **Section 2** of this Article. This provision does not apply to time spent in preparation for negotiations.
- G. Time shall not accumulate from one representative to another, nor from pay period to pay period.
- H. The Union representative has sole discretion to determine what constitutes the appropriate amount of official time a representative uses for representing a bargaining unit employee.
- I. Should Management believe there has been a pattern of abuse of official time provisions by any NFFE representative, the National Labor Relations Director will initiate a dialogue with the National NFFE President or designee. No official time will be arbitrarily denied based on any suspicion of abuse. Should the Union suspect

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that Management is inappropriately denying official time, the National NFFE President or designee will initiate a dialogue with the National Labor Relations Director.

### **Section 5. Release to Perform Representational Duties**

- A. Union representatives who are on 100% official time will report to his/her Union office to perform their representational functions when not in travel status or teleworking. When 100% Union representatives travel within their region but do not require travel orders, they will notify their supervisor or designee of their intended location(s). The Parties agree to continue the Memorandum of Understanding concerning Telework for NFFE Union Representatives, effective January 12, 2012 and incorporate the Memorandum into this Agreement as Appendix C.
- B. The release procedures contained in this section only apply to less-than 100% official time representatives.
1. When Union representatives need official time to perform their representational duties, it will be requested on an individual, case-by-case basis. Union representatives are required to obtain approval from their immediate supervisor or designee before using official time under this Agreement. If the supervisor or designee is not available, the Union representative will leave a message for the supervisor or designee. Normally, if a Union representative requests release, in accordance with the terms of this Article, to perform a representational function, release should be granted immediately so long as staffing and workload permit. When release cannot be accomplished immediately, the representative will be released as soon as possible.
  2. This release should, generally, be of short duration, normally less than one day. However the Parties recognize that some circumstances may warrant release for one day or more. In those cases the Union representative should seek release in advance. If a supervisor would otherwise approve a request for annual leave for that time from the employee, the supervisor should normally approve the request to use official time.
  3. If the representative requires one hour or more official time than what was originally approved by the supervisor, he/she will obtain advanced approval for the additional time from the approving official. If the approving official is not available, the Union representative will leave a message and will document the time used in accordance with **paragraph B(1) of Section 5** above upon his/her return.
  4. When a Union representative has completed the use of official time, that representative will notify his or her supervisor or designee, if available, upon returning to his/her work station. If the supervisor or designee is not available, the representative will email or leave a message with his/her supervisor or designee to notify the supervisor or designee of the time of his/her return.
  5. Management may delay or reschedule approved official time in the event unforeseen workload requires such adjustment.

## Union Proposals ARTICLE 6 – OFFICIAL TIME

6. Supervisors and Union officials will cooperate in scheduling the use of official time so as to best meet the needs of the Agency for customer service and the needs of the Union to provide representation to the bargaining unit.

### **Section 6. Information to be Provided for Release Requests**

When a Union representative requests release (this can be done by email) to use official time, he/she must provide the following information to his/her supervisor:

- A. The approximate amount of official time that will be needed, and
- B. The location where the representative will be performing the representational duties, and
- C. A general description of the representational duties (e.g., employee complaint, formal discussion, Weingarten meeting, pre-decisional involvement meeting with management, grievance meeting, ULP investigation).

### **Section 7. Visiting Work Areas**

When any Union representative enters work areas to meet with unit employees during duty time in the work area, he/she will obtain approval from the supervisor of that work area. Any pre-arranged meeting during duty hours with a unit employee will be cleared with the supervisor of the employee.

### **Section 8. Documenting and Reporting of Official Time**

All Union representatives shall document their use of official time in accordance with procedures and methods established by agreement by the Parties. Failure to abide by those procedures may result in the loss of contractual official time.

### **Section 9. Lists of Representatives**

- A. The National Council President or designee will provide the National Director of Labor Relations or designee with a list of designated Union representatives. The list will include each representative's name, duty station, and telephone number. The Agency will post, and update the list, as needed, on its Intranet. In addition, the Union will advise the National Director of Labor Relations of any deletions, additions, or changes at least two (2) workdays in advance of the effective date.
- B. Within thirty (30) days of the effective date of this Agreement, NFFE will provide a current listing of Union representatives to the National Director of Labor Relations.

### **Section 10. Changes to Official Time**

Provisions pertaining to contractual official time may only be negotiated or addressed at the National level.

### **Section 11. Union-Sponsored Training**

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Official time may be used for Union-sponsored labor relations training which is of mutual benefit to the Parties and approved in advance by the Agency. The Agency will grant the following amounts of time each year of the contract:

Representative authorized 100% official time ..... No Limit

All other Representatives ..... 40 hours

The Union will make every effort to submit two weeks in advance to the appropriate Human Resources representative, a copy of the agenda, if available, or a written description which gives the subject matter, the duration, purpose, and nature of the training.

### Statements of Intent for Article 6

- A. The Parties agree that there will be no posting on the Intranet of substitute representatives who will be in place for two (2) pay periods or less. (Section 3)
- B. The designee may include the Regional Labor Relations Officer. (Section 4(B)(6))
- C. It is understood that any lobbying activities must be permitted by law. (Section 4(B)(11))
- D. The Union representative and his/her supervisor or designee will work out the appropriate notification process to be used. The Parties agree that Union representatives while not at their Union office will be available via their cell phone. (Section 5(A))
- E. This section does not prevent a Union representative from requesting official time in advance. (Section 5(B)(1))
- F. The Parties expect these instances to be rare. (Section 5(B)(5))
- G. The Parties agree that no more than a general description is required by the Union representative. However, the description given must pertain to the specific request being placed. (Section 6(c))
- H. This provision is not intended to limit the rights of the Union representative to administer all the functions of this Agreement. In exercising these rights the Parties understand that it is in the best interest of the Parties to avoid undue disruption of other employees' work. (Section 7)
- I. For the purposes of this section it is intended that the designated individual be one (1) representative designated by the National Council President or equivalent. (Section 9(A))
- J. Normally a two (2) week period of advance notice would need to be provided for a change to a newly-designated NFFE one hundred percent (100%) representative. (Section 9(A))

Either Party can approach the other, and by mutual agreement negotiate contractual official time at the National level. (Section 10)

## ARTICLE 15 - PERFORMANCE APPRAISAL SYSTEMS

### Section 1. General

This Article sets forth the procedure and requirements the Agency will follow in implementing an appraisal system consistent with applicable law, regulation and Agency policy for bargaining unit employees.

### Section 2. Policy

- A. Performance appraisal systems applicable to employees will be fair, equitable, and in accordance with [OPM regulations including 5 C.F.R. Parts 430 and 432](#).
- B. The Agency will follow GSA policy governing performance plans and appraisals and this Agreement to evaluate the performance of employees. The Agency will [provide](#) necessary training to employees relative to their duties and responsibilities under this system.
- C. The Union will be notified at the National level and provided the opportunity to bargain, consistent with law, over any change to the Agency performance appraisal system.
- D. The Agency agrees that the Union has an interest in the performance standards established for employees. The Agency further agrees to notify the Union at the National level during the development and revision of templates of model performance standards (at the Agency level), and to give consideration to the Union's ideas and suggestions. The Union will be provided copies of the finalized templates.
- E. [The Agency will make performance standards established for the various occupational series available for the Union's review and to give consideration to the Union's ideas and suggestions before finalizing the standards for those series. Upon request, the Agency will provide a briefing to the Union.](#)

### Section 3. Definitions

- A. Critical element - A work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that the employee's overall performance is unacceptable.
- B. Performance standard - The Management-approved expression of the performance threshold(s), requirements(s), or expectations(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.
- C. Appraisal - The process under which performance is reviewed and evaluated.
- D. Rating period - The period of time for which an employee's performance will be appraised and a performance rating issued. The period is normally one year in length and must be at least one hundred and twenty (120) days to result in a summary rating. The standard annual rating period is October 1 through September 30.
- E. Signature - Any signature required in this Article may either be in hard copy or electronic.
- F. Performance Assistance Plan (PAP) - Used for employees who are performing at Level 2.
- G. Performance Improvement Plan (PIP) - Used for employees who are performing at Level 1.

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- H. Performance Plan - All of the written, or otherwise recorded, performance elements that set forth expected performance. A plan must include all critical and non critical- elements in their performance standards.

### Section 4. Critical Elements and Performance Standards

- A. The Agency will establish critical elements and related performance standards for each position which will permit the accurate evaluation of job performance on the basis of criteria related to the position. The supervisor will utilize the official position description in developing the critical elements.
- B. A performance plan identifying the critical elements and performance standards of the position will normally be developed within thirty (30) days after the beginning of each permanent assignment or any detail or temporary promotion that is expected to last one hundred and twenty (120) days or longer. No performance plan is complete until it is approved and issued to the employee. Performance plans may be modified at any time, but changes will not retroactively be applied to appraise an earlier period of performance unless by mutual agreement. Employees will be offered an opportunity to acknowledge receipt of their performance plan. Employees will not be required to back-date their signature on performance plans absent valid and proper reasons and by mutual agreement between the manager and the employee.
- C. Critical elements and performance standards must be consistent with the duties and responsibilities contained in the employee's position description. On details where new performance standards are issued, the standards should be consistent with the new duties assigned to the employee while on the detail.
- D. Bargaining unit employees will be given the opportunity for substantial participation in the development of the performance plan against which the employee's performance will be appraised. It is important for supervisors to encourage the participation of employees in the development of the employees' performance plans. At the employee's request and with the consent of the supervisor, the Union will be permitted to attend the meeting for purposes of assisting the employee in the development of the performance plan.
- E. Employees cannot be held responsible for meeting critical elements and performance standards until they are made aware of and have been given copies of the elements and standards. The Agency will answer employee questions or questions from a Union representative (when present) as to what is necessary to achieve each level of performance. Training that is mandatory and that can impact a performance rating should be identified by the supervisor in writing.
- F. Critical elements and non-critical elements and standards may be changed in any given performance period, provided that, if changed, the employee must be under the new standards or elements for at least one hundred and twenty (120) days prior to the summary rating. Any time an employee changes positions, new performance elements will be administered in accordance with this Article. If there is no change to the employee's performance plan, the employee will be so notified.
- G. Upon receipt of a new performance plan, an employee shall be given no less than five (5) work days to review, comment, and suggest changes or additions.

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- H. After discussion of the critical elements and performance standards has been completed, the supervisor and the employee will complete and sign the official form and initial, date, and number each page documenting the employee's performance plan. A copy will be furnished to the employee. An employee has a right to note disagreement with the performance standards on the form. The performance plan is developed and maintained in the Agency's electronic system. However, the actual signed document with comments is maintained by the supervisor in a separate supervisory file that is accessible to the employee. Upon the employee's request, at the time an appraisal (e.g., midterm, interim, or final) is submitted, attachments will be included and uploaded into the electronic system by the supervisor, including the signed PDF version of the performance plan with comments and documentation.
- I. The employee's written comments about the final performance plan and the actual signed performance plan, which are placed in the supervisory performance file, will be provided to the employee prior to being placed in the file. Any documents used during a mid-year, interim, or final appraisal, placed in the supervisory performance file, will be shown to the employee at the time of the discussion. , and the supervisor will notify the employee that he/she will be provided copies upon request.
- J. Once critical elements and performance standards for a position have been developed, they do not necessarily need to be changed when the position's incumbent is changed. However, the new incumbent will be given an opportunity to review and comment on the performance plan before the performance plan will be used to appraise the new incumbent's performance.
- K. Supervisors and employees will use this opportunity to mutually develop or update Individual Development Plans (IDPs) in accordance with Article XX, Training and Career Development of this Agreement. At the performance review, the supervisor will discuss the employee's professional growth needs and avenues to meet those needs.
- L. Delays in establishing performance plans should be infrequent and based on unusual circumstances.
- M. For any subsequent changes to the performance plan, the employee will have an opportunity to be advised of the change and to comment in response to the change, in the official system of record.

### Section 5. Midpoint and Other Progress Reviews

- A. Employees will be given a performance review at least semi-annually. At least one review should take place at the approximate midpoint of the rating period, but no later than forty-five (45) days after the midpoint. Additional reviews will be given as the supervisor deems appropriate or upon the employee's request.
- B. During performance reviews, the supervisor will provide an objective review of assignments on which the employee has performed, or had an opportunity to perform, since the beginning of the rating period, and feedback concerning the level of performance in each critical element. The supervisor will document the review and provide the employee with a copy. The supervisor will also provide documents relied upon in performing the review, upon request from the employee.

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The employee may request that the supervisor upload written comments into the Agency's electronic system.

- C. The supervisor will inform the employee during the review **whether the employee's performance to date remains consistent with the overall rating received on the last annual rating.** This review does not require assignment of a level to each element or a calculation of the exact summary rating similar to the annual review.
- D. With the consent of the supervisor, the employee may have a Union representative present for the progress review.

### Section 6. Annual Performance Rating

- A. After completion of the rating period, a performance rating will be completed, approved, and issued to the employee within forty-five (45) days and in accordance with Agency procedures contained in the Order on performance appraisals. The document **original copy shall** be signed by both the employee and the supervisor at the time the employee receives the rating. **Once the employee rating is implemented in the Agency's electronic system, the Agency will not make any additional changes to the rating of record, as contained in the electronic system, without notice to the employee and an opportunity to sign and make comments to the revised document.**
- B. Employees will be evaluated only for work assigned during the rating period. An employee's performance will not be adversely affected by work not assigned.
- C. An employee **will** be given the opportunity to provide a concise written summary of relevant performance accomplishments (self-assessment) to the rating official by the last day of the rating period. The rating official will consider the information provided in the summary when preparing the rating. Upon request from the employee, the supervisor will also provide documents relied upon in performing the review. The summary will be forwarded with the recommended rating to the reviewing official, if appropriate. This summary will not preclude the employee from making written comments or presenting evidence for inclusion in the performance file.
- D. In preparing the rating, the supervisor will **make appropriate allowances for work-related factors beyond the control of the employee which may have made it difficult to meet the written performance standards for a particular critical element, or to achieve a particular level of summary rating.**
- E. A justification for a summary rating **other than Level 3 must** be completed in writing and made a part of the employee's performance appraisal file. Each employee will have access to the electronic rating, **be given a copy of the rating,** and any related documentation.
- F. When issuing the rating, the supervisor **will** give the employee an opportunity to discuss the rating or other factors relevant to performance appraisal.
- G. If the supervisor and employee do not agree on the rating, the employee may note this in writing for inclusion with the rating of record. The employee may submit written comments and other relevant materials **for management** to upload into the Agency's electronic **system.**
- H. Employees serving on temporary assignments (e.g., details or temporary promotions) for one hundred and twenty (120) days or more during the annual rating period receive an interim rating covering the period of the temporary assignment. The interim rating will be considered in the

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overall review. 'Considered in' means reviewing the interim rating and deciding whether the interim rating impacts the overall summary rating.

- I. The Agency's expectation is that departing supervisors will prepare summary ratings for employees they supervise. If this expectation is not met, then the expectation is that the next-level supervisor will prepare summary ratings for employees who did not receive a summary rating. **If a new supervisor has not been in place for one hundred and twenty (120) days to issue an annual rating, the summary rating will be applied.** Where a new supervisor issues a new performance plan during the performance cycle, the employee will not be evaluated under that new plan, for that performance period, unless it has been in place one hundred and twenty (120) days prior to the end of the performance cycle. When the employee has not worked under any performance plan for one hundred and twenty (120) days during the performance period or is undergoing a PAP or a PIP, the rating period will be extended. If this extension goes beyond the period for which awards are calculated, the employee will be made whole once the annual review is provided. The timeframe for processing payment of awards for employees whose rating period was extended will be consistent with the timeframe for paying out awards after the normal performance period.
- J. An employee who performs at the Level 3 or higher level is considered to be performing at an acceptable level of competence for the purpose of eligibility for a within-grade increase. An employee whose summary rating is at Level 2 or below is not eligible for a within-grade increase.
- K. Reviews will be conducted in accordance with Agency policy. The performance rating official cannot serve as both the rating and reviewing official. The reviewing official shall be at least one level above the rating official.
- L. An employee's signature on the appraisal form indicates only that the appraisal has been received, not an employee's agreement with the appraisal.
- M. With the consent of the supervisor, the employee may have a Union representative present for a performance review. Employees who are concerned about the results of a performance review may request the presence of a Union representative at any related follow-up discussions concerning the review.

### **Section 7. Minimally-Successful Performance**

- A. At any time a supervisor or rating official judges an employee's pattern of performance to be at Level 2 **or below** in one or more critical elements, the supervisor will inform the employee of the pattern of performance in writing.
- B. The supervisor will provide specific information on the critical element(s) that the employee is falling below a Level 3. The supervisor will develop a written Performance Assistance Plan (PAP). The PAP will identify the specific criteria and actions that are needed to meet level 3.
- C. The supervisor will assist the employee during the PAP period and will use options that are both appropriate and feasible, which may include the following:
  1. The supervisor and employee meeting to discuss the expectations under the PAP and allowing the employee to ask questions regarding those expectations.

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2. Giving the employee the opportunity to work with a fully-successful employee who can provide coaching and feedback of an informal nature.
  3. Discussing with the employee whether additional training is appropriate.
- D. The Agency will provide written notice within thirty (30) days after the end of the PAP as to whether or not the performance has improved above Level 2.
- E. Employees who perform at Level 2 will not be demoted or removed under 5 CFR 432 solely for the Level 2 performance.
- F. Telework arrangements may be reviewed on a case-by-case basis to determine whether a telework arrangement needs to be modified to meet the requirements of the plan.

### Section 8. Unacceptable Performance

- A. When the supervisor observes that an employee's performance is unacceptable in one or more critical elements, the supervisor will inform the employee in writing of the observed pattern of performance and provide the employee an opportunity to improve by developing a written performance improvement plan (PIP). Notification **must** allow time for improvement prior to being given a final summary rating. The purpose of the PIP is to assist the employee in improving performance to the **fully** successful level. The PIP will give an 'opportunity period' of not **less** than **sixty (60)** days for the employee to improve performance. Depending on the nature of the work, a longer 'opportunity period' may be appropriate. The PIP will specify, as appropriate, the counseling, training, coaching and any other specific actions to be accomplished within the 'opportunity period'.

If an employee would be given an unsatisfactory rating at the end of the performance year and has not been placed on a PIP with respect to the same critical element during the performance year, the rating period will be extended and the employee should be placed on a PIP. Upon completion of the PIP, a final rating will be given. The employee will be given the following information (in writing):

1. An explanation of those aspects of performance in which the employee's performance falls below Level 2,
  2. A detailed explanation of what must be done to bring his/her performance up to at least Level 2,
  3. A statement that his/her performance may result in a reassignment, demotion or removal if the employee does not demonstrate performance at Level 2 or higher during the PIP period.
- B. During the PIP period, the supervisor or designee will conduct regular meetings with the employee to provide feedback regarding the employee's progress under the current performance improvement plan. At the employee's request, a Union Representative can participate in the meetings, provided that no delay to the meeting results.
- C. Within ten (10) work days after the end of the PIP period, the employee will be notified as to whether he or she successfully completed the PIP.
- D. If the supervisor determines to extend the period of the PIP, he/she will notify the employee in writing.

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- E. The requirement for issuing a performance improvement plan does not apply to those employees serving a probationary or trial period, or to temporary or certain term employees.
- F. If, after being given the opportunity to improve, the employee continues to fail to meet performance standards for one or more critical elements (as indicated by achieving at least minimally acceptable performance), the Agency will consider reassignment, demotion or removal of the employee from his/her position, as appropriate.
- G. If the Agency considers it necessary to effect a demotion or removal for unacceptable performance under the procedures listed in the applicable law and regulation, the Agency will follow applicable procedures. The employee will be provided with a final written decision on or prior to the effective date of the action. The decision letter will contain the notification of appeal and grievance rights.
- H. The Agency will comply with law, rule, government-wide regulation, Agency policy, and this Agreement in taking actions against employees under this Article.
  - 1. If the Agency proposes to effect a demotion or removal, any such action, if taken under the procedures of 5 U.S.C. Chapter 43 (432 actions), the proposal will be issued at least thirty (30) days in advance of the final decision notice and will include:
    - a. The specific instances of unacceptable performance,
    - b. The employee's right to reply to the proposal orally and/or in writing within fifteen (15) calendar days to the deciding official and to be represented by the Union.
    - c. The timelines set out in this section can be extended by mutual agreement of the Union and the Agency or of the employee and the Agency as applicable.
  - 2. The final written decision by the Agency will:
    - a. Be concurred with or issued by an official who is in a higher position than the official who proposed the action,
    - b. Be received by the employee at or before the time the action will be effective, and
    - c. Provide notification of appeal or grievance rights which includes Merit Systems Protection Board and negotiated grievance procedure rights.
- I. In 432 actions, only instances which were stated in the proposal letter may be cited as the basis for the action; however, any improvements in the employee's performance during the notice period may be cause for reconsideration of the action. Actions taken under 5 USC Chapter 75 (752 actions) are subject to the provisions of **Article XX**, Discipline.

### **Section 9. Denial of Within-Grade Increases/Step Increases**

- A. General Schedule Employees – Within-Grade Increases/Step Increases
  - 1. An employee under the General Schedule (GS) who is paid at less than step 10 of the grade of his/her position and is not subject to a salary cap must be advanced in pay to the next higher step provided the employee has completed the required waiting period, has not received an equivalent increase during the waiting period, and is performing at an acceptable level of competence.
  - 2. An employee under this system who is performing at least at a fully-successful level (Level 3) shall be considered to be performing at an acceptable level of competence. Therefore, when

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the employee is informed in writing of the critical elements and performance standards for his/her position, he/she will be informed of the acceptable level of competence. An employee whose summary rating is at Level 2 or below is not eligible for a within-grade increase.

3. If a within-grade increase is denied for a general schedule employee, the employee will be informed in writing of the reason(s) for the negative determination and the right to seek reconsideration.
4. The Agency will provide written notice to the employee of the right to request reconsideration and the notice will include:
  - a. That the employee's request must be in writing and submitted to the Agency within fifteen (15) days of receipt of the negative determination,
  - b. The name and email address of the person to whom the request for reconsideration is to be delivered,
  - c. That the employee, if otherwise in a duty status, will be granted a reasonable amount of official time to review the material that is the basis of the negative determination and to prepare a request, and
  - d. That the employee has the right to be represented by the Union.
5. [The Manager who receives a request for reconsideration will establish a reconsideration file, which will contain all pertinent documents relating to the negative determination. He/she will issue a decision on the request for reconsideration within thirty \(30\) calendar days.](#)
  - a. If the reconsideration decision is to grant the within-grade increase, the decision will be made retroactive to the first day of the first pay period when the employee would have otherwise been eligible for the increase.
  - b. If the reconsideration decision is to deny the within-grade increase, the notice of the decision will inform the employee of the right to file a grievance under the negotiated grievance procedure.

### **Section 10. Performance Records**

- A. To the extent appropriate, supervisors will maintain records of performance supporting performance reviews and annual ratings which may include, as appropriate:
  1. What work was assigned,
  2. When it was assigned,
  3. What instructions, written or oral, were given concerning:
    - a. Time requirements, if a factor,
    - b. Cost requirements, if a factor,
    - c. Quality requirements,
    - d. Quantity requirements,
    - e. Process requirements (e.g., steps to follow, a procedure to use),
    - f. Other requirements.
  4. When assignments were past due,
  5. When assignments were cancelled or transferred to other employees, and

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6. When assignments were completed and whether they met, failed to meet, or exceeded standards.
- B. The annual overall rating will be kept on file for the period specified in OPM regulations.
- C. Materials supporting the denial of a within-grade increase will be maintained until any grievances or appeals are adjudicated.
- D. The employee and the Union, with the employee's written consent, have a right to a copy of the records relied upon to support the denial or reconsideration decision.
- E. Performance records are subject to Section 7 of **Article XX**, Employee Rights.

### **Section 11. Successful Performance**

An annual rating of at least fully-successful or level 3 will be the basis for an employee in a non-competitive career-ladder position to be promoted to the next level of the ladder, provided time-in-grade criteria and other applicable requirements are met.

### **Section 12. Appraisal System Information**

- A. The Agency will advise employees of the provisions of the performance appraisal system including the definition of and significance of critical elements, the purposes of performance standards, the relationship of performance appraisal to awards, within-grade salary increases, and completion of probation, the use of GSA appraisal system forms, and the purposes of performance reviews.
- B. Should the Agency schedule general training sessions for employees on the appraisal system, a Union representatives may attend.

### **Section 13. Special Circumstances**

- A. Negative effects on ratings shall not be based on errors resulting from employee reliance on erroneous information or material from a supervisor.
- B. If employees are given assignments for which they have no prior knowledge or experience, they will be given appropriate direction or training.
- C. Performance appraisals must make allowances for work-related factors beyond the employee's control, authorized absences for union representational duties, and requested and approved leave. The assignment and evaluation of work will take into account the amount of time a Union representative is in work status (*i.e.* not utilizing official time).

### **Statements of Intent Article 15**

- A. The Parties anticipate that the Agency will revise its policy on performance management (including appraisals and awards) during the term of this Agreement. The Agency intends to engage NFFE in active pre-decisional involvement in this revision process. Any changes which affect this Article will be subject to law, regulation and this Agreement. (Article 15)
- B. Delays in establishing performance plans should be infrequent and based on unusual circumstances. (Section 4(B)) [Language was inserted into Section 4]

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- C. For any subsequent changes to the performance plan, the employee will have an opportunity to be advised of the change and to comment in response to the change, in the official system of record will be signed, initialed, and dated by the employee. (Section 4(H)) [Language was inserted into Section 4]
- D. This review does not require assignment of a level to each element or a calculation of the exact summary rating similar to the annual review. (Section 5(C)) [Language was inserted into Section 5]
- E. Employee submissions for uploading need to be reasonable in length and may include such items as self-assessment and customer feedback. (Section 6(G))
- F. 'Considered in' means reviewing the interim rating and deciding whether the interim rating impacts the overall summary rating. (Section 6(H)) [Language was inserted into Section 6]
- G. The timeframe for processing payment of awards for employees whose rating period was extended will be consistent with the timeframe for paying out awards after the normal performance period. (Section 6(I)) [Language was inserted into Section 6]
- H. This issue is covered in 5 CFR 531.404(a). (Section 6(J))
- I. In rare circumstances where there is no higher-level management official above the rating official, they could be the same person. (Section 6(K))
- J. The timelines set out in this section can be extended by mutual agreement of the Union and the Agency or of the employee and the Agency as applicable. (Section 8(H)(1)) [Language was inserted into Section 8]

## **ARTICLE 5 - UNION USE OF OFFICIAL FACILITIES AND SERVICES**

### **Section 1. Office Space and Facilities**

- A. The Agency shall continue to provide office space where it has been doing so prior to the effective date of this Agreement. This includes all existing Union offices (Atlanta RBR Building, NCR Regional Office Building, and Chicago JCK Building). In the event an existing Union office must be moved the parties agree to negotiate to the fullest extent allowed by law.
- B. Union Representatives, who do not presently have a Union office, may request Agency office space on an ad-hoc basis, which provides privacy for discussion with employees for representational purposes.
- C. The Agency will provide the Union offices with office furniture and equipment comparable to what the employees receive. Office furniture shall include a desk, a file cabinet, chairs (ergonomic if available), printer, fax, scanner, or multi-function device which serves a number of these functions, a reasonable amount of copy paper, toner, service and support to this equipment at no cost to the Union. The Agency agrees to provide the Union with a reasonable amount of office supplies equivalent to what Agency employees receive (e.g., pens, pencils, note-pads).
- D. Employees are entitled to use their Agency-issued laptop or computer equivalent for Union representational activities. The Agency will also permit Union representatives the use of Agency equipment, in common areas, for representational duties.
- E. Any use of Agency equipment or services shall be consistent with the Agency's personal use policies.
- F. Union representatives who use Agency computers for representational purposes are subject to Agency regulations concerning use of government computers.

### **Section 2. Internal Mail Services**

- A. Non-Electronic Mail
  - a. The internal mail distribution service of the Agency shall be available for reasonable use by the Union in connection with its representational duties and for tangible Union benefit information.
- B. Electronic Mail
  - a. Consistent with The Union is also authorized to use the Agency's electronic mail system for official representational duties in communication with Management and bargaining unit employees, subject to law, Agency and government-wide policies, guidance and practices. Use of broadly-distributed messages will be reasonable, which means that it is understood that the Agency's ability to carry on its business will not be interfered with by the Union's frequency of use of broadly-distributed messages and may only be addressed to bargaining unit employees.
- C. Agency officials or IT personnel are not entitled to access Union representatives' electronic mail, mail, computer, and or files other than for legitimate purposes as established by law, government-wide or Agency regulations and policy.

### **Section 3. List of Employees**

On a quarterly basis, GSA will provide electronically to the NFFE National Secretary Treasurer or designee an up-to-date list of bargaining unit employees. The list will show full name, position title, grade, organizational assignment, physical location (city and state if virtual employee), date of entry on duty, and current contact information (i.e., business telephone number, agency email address but not Social Security Number, home address, or telephone number). The Parties are both responsible for fully maintaining confidentiality, security practices, and protecting Personally Identifiable Information (PII) that has been provided.

### **Section 4. Union Representatives' Parking**

Union representatives' access to parking will follow current practice consistent with government-wide and GSA parking policy and guidance. Should the GSA parking policy and guidance or government-wide policy change, the Agency will give the Union notice and the opportunity to bargain to the fullest extent allowed by law.

### **Section 5. Bulletin Boards**

The Agency will maintain NFFE bulletin boards currently in place as of the execution of this Agreement. In addition, the Union shall be allowed to post its literature on the same basis as any employee or the Agency on all general use bulletin boards where bargaining unit employees are located.

### **Section 6. Telephones**

- A. The Agency will continue to provide existing Agency telephones and service and will provide at least one phone in each Union office with conferencing capability together with maintenance and service. Should the Agency eliminate land-lines or the current method of providing service, the Agency will provide the Union notice and an opportunity to bargain over the implementation of the elimination of land-lines and the type of new service to be provided.
- B. When telephone system capabilities are upgraded, the Union office will be included in the system upgrade at no cost to the Union.
- C. Employee Union representatives who are on 100% official time will each be provided with a cell phone/PDA and services at no cost to the Union.
- D. Union representatives who are on less than 100% official time, who continue to perform official duties and have been issued a cell phone/PDA/multi-purpose mobile phone for use in the performance of their official duties, may use those devices in connection with the performance of their representational duties.
- E. The NFFE National Council President or equivalent, if not an Agency employee, will be provided an Agency-issued cell phone/PDA and services at no cost to the Union.
- F. Union representatives will have the same communications privacy as is applied to other employees.

### **Section 7. Distribution of Literature**

Subject to security, safety and legal requirements, the Union may distribute informational literature on all GSA premises before and after work, during breaks and lunch periods.

### Intent Statements for Article 5

- A. At this time the Agency has no definite plans (other than those offices described in the MOU dated June 13, 2012) to move any of the Union offices contained in this Article. At the time the Agency decides to move any Union offices, the Agency will give notice to the Union and bargain pursuant to this Agreement. (Section 1(A))
- B. It is understood that the MOU between GSA and NFFE dated June 13, 2012 on office consolidation into 1800 F Street will provide new office arrangements for NFFE representatives. Until the Union representatives are actually moved pursuant to the MOU, they will remain in their existing space. The MOU is incorporated into this Agreement as Appendix XX.
- C. It is understood that in Tampa, Florida the Union representative will be able to use his/her assigned work-space for both GSA and Union representation work.
- D. Furniture and equipment must be serviceable and comparable to the office furniture and equipment of employees. Excess furniture may be a source for Union furniture. (Section 1(C))
- E. The Agency will not incur any cost from the internal mail distribution beyond the normal cost of providing the service. Examples of excluded costs are COD charges, Overnight Delivery charges, Postage Due, Customs charges, and like charges. The Agency will provide access so long as the Agency maintains the internal mail services. In the event the Agency terminates its internal mail services, the Agency will notify the Union. The Agency agrees to provide notice as soon as the Agency becomes aware. The distribution would be to bargaining unit employees. (Section 2(A))
- F. "Subject to law" includes the Hatch Act. (Section 2(B))
- G. It is understood that confidential information will be maintained on these computers. Therefore, absent legitimate purposes, Agency or IT personnel will not access that information. If the Agency elects to do a scan only of Agency computers used by the Union, the Agency will notify the Union representatives prior to the scan. (Section 2(C))
- H. The Agency will consider requests for the bargaining unit list of employees other than quarterly. Bargaining unit employee lists will also be provided when necessary in support of a representation petition filed with the FLRA. (Section 3)
- I. Where the Union organizes new bargaining units at new locations where the Union has never had bargaining unit employees before, the Agency agrees to provide bulletin boards consistent with this Agreement. (Section 5)
- J. Union representatives shall not be required by the Agency to keep records of incoming or outgoing calls. (Section 6)
- K. It is understood that "existing Agency telephones" for the purposes of the move to 1800 F Street will include a telephone and telephone capability at each workstation. (Section 6(A))
- L. Employee Union representatives who are on 100% official time may be provided a multi-purpose mobile phone (i.e., Blackberry, or equivalent) based on availability in their work site and as provided to other employees. (Section 6(C))
- M. Employee Union representatives who have already been issued an Agency phone will not be issued a duplicate phone. (Section 6(C))